Public Utilities

FORTNIGHTLY

February 13, 1941

UTILITIES AND THE WAR
By Herbert Corey

« »

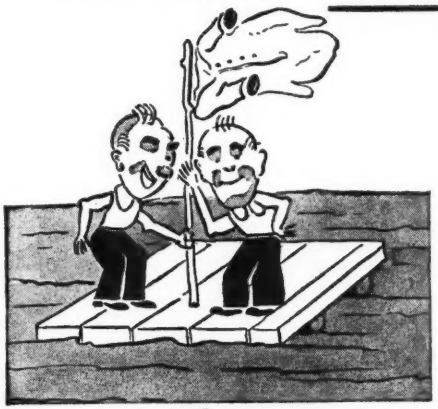
Natural Gas, the Ugly Duckling
By W. D. Gay

« »

Changing Labor Policy and the Public Utilities
By Andrew Barnes

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

HAVE YOU HEARD

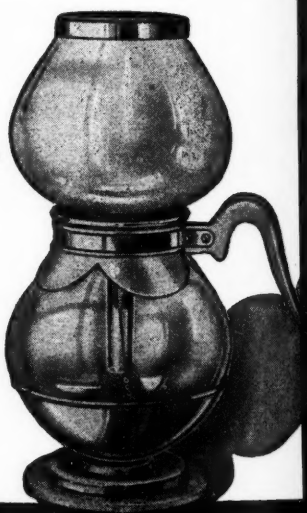


that . . . 92% of American homes are without a glass coffee maker. It's practically a virgin market . . .

and . . .

Every

Silex Glass Coffee Maker
you put on your line
adds
an average of 87 KWH
to your load



Push *Genuine* **SILEX and watch your load climb**

THE SILEX COMPANY . . . DEPT. U. . . HARTFORD, CONN.
Creators of the Glass Coffee Maker Industry

rtified by A. A. Test- Laboratory. es ¼" up.

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BARBER Regulators keep good company — you'll find them endorsed and used by appliance manufacturers who are particular about their own product. You'll find them recommended by many gas companies for their customers' use. In line with economical and efficient service to the public, a *reliable* pressure regulator always increases operating safety and economy, and reduces complaints and service calls.

Barber Quality Regulators are well built and are thoroughly tested for response within a range of 3/10 pressure drop. Materials are the finest—all bronze body, brass working parts, phosphor bronze springs, high grade sheepskin diaphragm. Barber is a regulator you are safe in recommending to your customers.

tractive folders on this gulator will be fur- hed free, at your re- st, for distribution to ur trade. Write for talog and price list on rber Burner Units for s Appliances, Conver- n Burners for Furnaces l Boilers, and Regu- ors.

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BARBER GAS PRESSURE REGULATORS

rber Burners For Warm Air Furnaces, Steam and Hot Water Boilers and Gas Appliances

Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH, NEIL H. DUFFY
Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXVII *February 13, 1941* NUMBER 4

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Utilities Almanack 193
Cement Plant ..... (*Frontispiece*) 194
Utilities and the War ..... *Herbert Corey* 195
Natural Gas, the Ugly Duckling ..... *W. D. Gay* 204
Changing Labor Policy and the Public Utilities ..... *Andrew Barnes* 213
Wire and Wireless Communication 219
Financial News and Comment ..... *Owen Ely* 223
What Others Think 229

The State Governors and the Utilities
SEC Considers Competitive Bid Rule
New Deal Substitute for Logan-Walter Bill Favorably Received

The March of Events 240
The Latest Utility Rulings 249
Public Utilities Reports 255
Titles and Index 256

Advertising Section

Pages with the Editors 6
In This Issue 10
Remarkable Remarks 12
Industrial Progress 36
Index to Advertisers 58

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THE gas industry's relationship to the electric industry has always struck us as being somewhat similar to the worthy sisters mentioned in the Holy Scripture, Martha and Mary. Mary, as we recall from our bible history, was younger and more versatile. Martha was older, plainer, and practical—more at home in the kitchen than in the drawing-room. By virtue of their supplementary talents, they made a good team and merited the benediction of the Good Master.

BUT, to shift our analogy to the modern utility prototypes, the electric Mary seems to have captured more benediction from the American investor than the hard-working Martha. The stockbuyer, the bond dealer, and even the sophisticated institutional investors have a tendency to turn up their noses at gas issues (figuratively, of course), while at the same time yielding choice places in their portfolios to electric securities. And this, in the face of impressive earnings and aggressive management, which have been especially noteworthy in the expanding field of natural gas operations. Electric Mary is still the favorite despite past frivolities, while Martha the drudge has had to work overtime for every nickel she can attract in the money market.

COMES now W. D. GAY, manager, utility department, Standard Statistics Company, Inc. (Harvard College, '26), who demands to know the reason for this discrimination. His article in this issue assures us statistically and analytically that there is little basis for it. He wants a square deal for Martha; and by the looks of the case he has made out in her behalf, some of our investors may be doing their pocketbooks an injustice by continuing to look down their nose at natural gas securities.

THE harsh realities of modern warfare have seriously shaken quite a few accepted beliefs. In the sphere of public safety, for example, it used to be agreed that safety precautions were always worth whatever expenditures were necessary to make them workable. Economy was thought to be admissible only for the purpose of deciding whether a less expensive safety device could do the work of a more expensive one.

BUT in the European conflict the safety of the greatest number has made the safety of the individual seem less important. From London we hear of such cold-blooded statistics as the value of an able-bodied woman being fixed at four-fifths of that of an able-bodied man for purposes of national defense, and that of a civilian at little more than half the value of a soldier trained for combat. The question of costs in air-raid precautions has become an important one, since Britain has had to count her pounds and shillings.

LIKEWISE, in the matter of protecting utility facilities from sabotage, air raids, and bombardment, the economy factor has already demanded consideration. Granted, for example, the possibility of burying electric and telephone conduits so deeply beneath the city streets that they could not be touched by hostile attack, there is the question of prohibitive expense and ordinary maintenance and repair costs.

OPINIONS have even been voiced in the contrary direction to the effect that electric and telephone wires in an area subject to repeated air raids might better be strung up on poles where they can be repaired quickly and make only a negligible target. Floating power plants, "spider web" distribution lines, and concrete-domed power plants just about complete the ideas on utility raid precautions.

HERBERT COREY

In following this aid-short-of-war policy, don't sell America short.

(SEE PAGE 195)

FORTUNATELY, American utilities are not faced with the immediate problem of maintaining service under pressure of constant air raids such as London is experiencing. With us, the problems of sabotage and espionage are more pressing for the moment. Yet, even on these shores the possibility of eventual air-raid attempts in strategic centers such as New York city and Washington cannot be ruled out entirely.

HAS the war experience so far produced any formula or plan for special protection of utility services under fire? HERBERT COREY, our regular Washington contributor, explores this situation in the opening article in this issue. Probably our cities could be made pretty nearly disaster proof for utilities, but at an expense so terrific as to make it impracticable.

WE have been told by a number of authorities, including President Roosevelt, that as a nation we are going to have to get over the idea of "business as usual" in the course of our national defense effort. For reasons which will be perfectly understandable to everybody, politicians have been stressing the fallacy of this "business as usual," without playing up very conspicuously the equally fallacious assumption that we can go on "consuming as usual" or even "working as usual."

HOWEVER, it is coming to be understood that not only the business man but the consumer and Labor are all going to see some changes made before the year 1941 has run its fateful course. This is simply because the nation's business machinery, as well as its skilled labor reserves, is unable to take care of the demands of the national defense program superimposed upon the normal operation of the nation's economy. On the other hand, the consuming public, with more money to spend, is going to find less places to spend it—excepting always the tax collector's window.

THESE changes may still come as a surprise to those who think that the rights of organized labor to collective bargaining, minimum hours, maximum wages, and the right to strike are sacred verities, paramount even to the nation's defense efforts. Labor, under pressure of the rearmament program, will probably not be such a critical factor for public utilities as for some other industries. But it is probable that some labor controversy in the utility field will show up during the balance of the year, just as it has already shown up in the aircraft industry and other vital defense businesses.

THE administration has shown itself to be sensitive to these shifting necessities. The recent change in the chairmanship of the National Labor Relations Board has been widely hailed as an effort to throw the balance of that tribunal towards a more temperate course of labor regulation. Will it work? Or will more determined correction of the tendency of some labor leaders to rock the boat during a critical period be required? In this issue ANDREW BARNES, veteran Washington newspaper correspondent, gives us an idea of just what is going on in the minds of the labor regulators in the nation's capital and in the minds of some members of Congress. (See page 213.)

W. D. GAY

There is gold in those gas pipes; but nobody seems to believe it.

(SEE PAGE 204)

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

AN investigation of telephone rates, with particular consideration of hand-set and service connection charges, was made by the Wisconsin commission. The monthly hand-set charge was ordered discontinued, and nonrefundable service connection charges were ordered to replace refundable service connection charges. (See page 193.)

THE Federal Power Commission recently ruled that it has authority to require a public utility which is subject to regulation under the Federal Power Act to keep general corporate and other fundamental accounts and records covering its entire electric utility business in conformance with the provisions of the commission's system of accounts. (See page 202.)

THE next number of this magazine will be out February 27th.

The Editors

In This Issue

In Feature Articles

Utilities and the war, 195.
Defending utilities in time of war, 196.
Importance of holding companies, 200.
Hysteria over sabotage, 202.
Natural gas, the ugly duckling, 204.
Adequacy of natural gas reserves, 205.
Outlets for by-product gas, 206.
Rate of return, 207.
Opposition of railroads to natural gas, 210.
Advantages of natural gas over manufactured gas, 211.
Changing labor policy and the public utilities, 213.
Sabotage of defense industries, 214.
Future policy of NLRB, 216.
Removal of defense industries from NLRB jurisdiction, 218.
Wire and wireless communication, 219.

In Financial News

SEC tightens integration requirements, 223.
Five-year analysis of utility financing, 224.
Commonwealth Edison, 225.
Competitive bidding, 227.
January security offerings, 228.

In What Others Think

State governors and the utilities, 229.
SEC considers competitive bid rule, 234.
New Deal substitute for Logan-Walter bill favorably received, 238.

In The March of Events

Court test seen, 240.
SEC issues new form, 240.
TNEC suggests laws, 241.
Power grid seen, 241.
Ask power agency, 241.
ICC and competitive bidding, 241.
New rates to bring saving, 242.
News throughout the states, 242.

In The Latest Utility Rulings

Notice of simplification proceedings under Holding Company Act, 249.
North Dakota commission considers depreciation, going value, and customer contributions, 250.
Approval of sale not required, 250.
Removal of electric meter for testing with test jack disapproved, 251.
Intrastate telephone company subject to national board in view of interstate connection, 252.
Approval of verbal lease denied, 252.
Boiler plant leases and cost guaranties of steam company, 253.
Municipality cannot prevent operation of one-man cars, 254.
Miscellaneous rulings, 254.

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193–256, from 36 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ROBERT M. HANES
Retiring president, American Bankers Association.

"Insolvency is the time bomb which can eventually destroy the American system."

STATEMENT
Association of American Railroads.

"A train starts on its run somewhere in the United States on an average of every $2\frac{2}{3}$ seconds."

SUMNER H. SLICHTER
Professor, Harvard Graduate School of Business Administration.

" . . . one might infer from the present tax laws that the encouragement of stagnation is part of the public policy of the country."

WILLIAM L. BATT
Deputy commissioner, Industrial Materials Division, National Defense Advisory Commission.

"We become so accustomed to talking in terms of billions of dollars that we are apt to overlook the magnitude of this defense program."

DONALD KIRKPATRICK
General counsel, American Farm Bureau Federation.

"High rates cannot insure railroad prosperity. It is rates times the volume of traffic that tell the story of transportation revenue."

JOSEPH V. SHERMAN
Writing in Barron's.

"The total freight-carrying car capacity of all the railroads in the United States is 17 or 18 times the aggregate capacity of all the trucks."

EMMETT F. CONNELY
President, Investment Bankers Association of America.

"Long-time credit—investment—is the key to industrial activity in a free enterprise system. Without industrial activity, laboring men go unemployed."

P. T. DASHIELL
Vice president, The Philadelphia Gas Works Company.

"If our industry in general goes into the business of toluol recovery, it will be for the purpose of doing its part in national defense and not from the profit urge."

FRANKLIN DELANO ROOSEVELT

"If our press exemplifies a passion for truth and justice and fair play to all, it will avoid that spiritual paralysis and decay which are the deadly enemies of our free institutions."

LOUIS RUTHENBURG
President, Servel, Inc.

"If normal, constructive employee relationships are to endure, management must compete intelligently and aggressively for the support and loyalty of the people on the payroll."

EDITORIAL STATEMENT
Industrial News Review.

"If this country ever is attacked, nothing could play into the hands of an enemy better than to have all the power-generating facilities located in plain sight at a few points along great and easily followed rivers."

CHARLES J. ZIMMERMAN
President, National Association of Life Underwriters.

"Just so there may be no doubt as to where we stand, the National Association of Life Underwriters would unalterably oppose the invasion by the Federal government into the field of life insurance regulation and control."

HOMER D. ANGELL
U. S. Representative from Oregon.

". . . the sun of authority should set forever for the rubber-stamp Congressmen. We need none of them. They have wrecked our economy. We need Americans in Congress, Democrats and Republicans alike, who put country above party, who stand on their own feet and do their own thinking."

PHILIP D. REED
Chairman of the board, General Electric Company.

"No longer is government simply the policeman of our economic highways. Government now seeks to operate our business vehicles, to dictate where we are going and how we shall get there, and so it slows us down and diverts our attention from our job by asking a lot of questions on the theory that we may be crooks."

LEO T. CROWLEY
Chairman, Federal Deposit Insurance Corporation.

"There has probably been an overabundance of speech on the general subject of the relations of government and business during this heated campaign year [1940]. I do not believe, however, that the influence of this broad subject upon the utilities field, that branch of business which is most closely supervised by government, has yet been properly explored or is yet well enough understood."

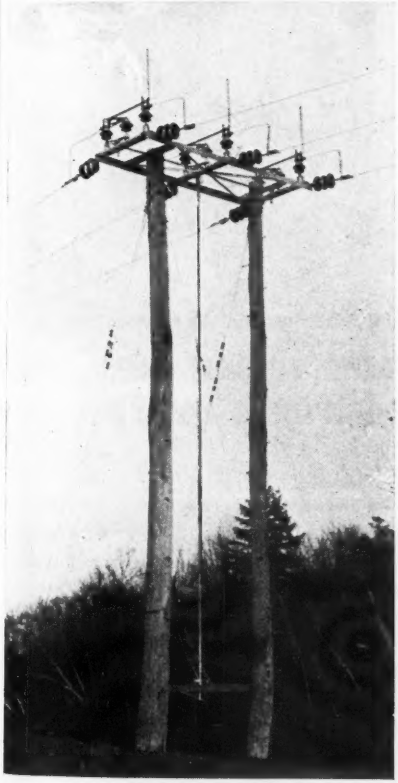
HORACE P. LIVERSIDGE
President, Philadelphia Electric Company.

"From time to time . . . [the business man] has received intimations of sharp conflict of interest between the major branches of transportation. He cannot be blamed if he has formed the impression, right or wrong, that in their rivalry a certain amount of thought and energy must have been diverted from the development of transportation as a whole in favor of the advancement of individual forms of transportation."

Excerpt from report of Economic Policy Commission, American Bankers Association.

"To speed up our effort for rearmament the government should simplify procedures, remove obstacles, and avoid bureaucratic interferences. If these should be the helpful attitudes of government in trying to create national armed strength, it is of equal importance that government should adopt similar attitudes in helping industry to prepare for the post-war and world-wide struggle that is coming between totalitarian production and that of free enterprise."

Below — Hi-Pressure contact disconnecting switch 34,500 Volt 600 Amp on lines of an eastern utility.



HI-PRESSURE CONTACTS

characterize all

R&IE SWITCHING EQUIPMENT

•

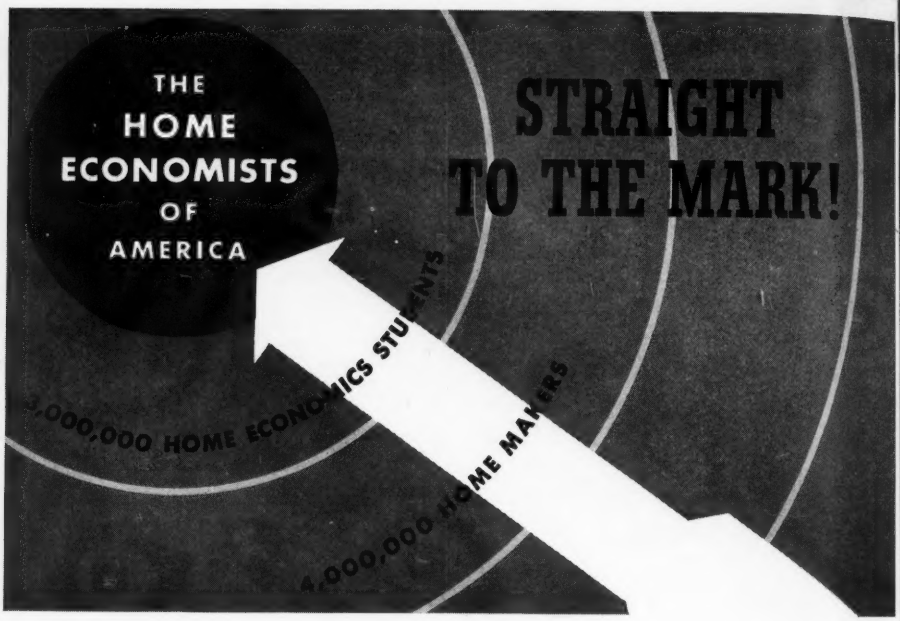
The Hi-Pressure contact, a feature originated by The Railway and Industrial Engineering Company, has revolutionized modern switch design. Switch contacts are wiped clean of dirt, corrosion, metal oxides, etc., with each operation and a clean metal to metal contact is assured.

Pressure is constant, assuring a contact which is free from the arcing or spitting which interferes with proper radio reception.

The original Hi-Pressure contact switches have been giving satisfactory service under all operating conditions for many years.

RAILWAY AND INDUSTRIAL ENGINEERING COMPANY

GREENSBURG, PENNA.

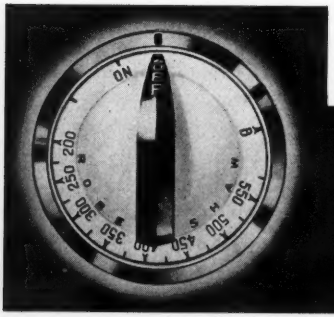


Robertshaw enlists the active assistance of the most influential kitchen promotion group

IN AN INTENSIVE CAMPAIGN TO SELL THE MODERN RANGE TO THE NATION'S HOMES

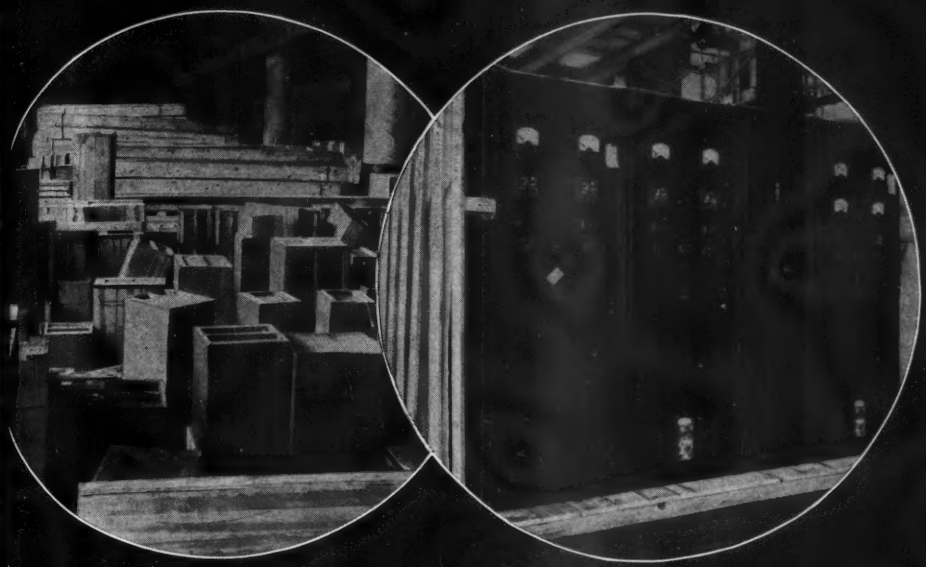
Robertshaw has created a new Educational Service for the free use of home economics teachers, home demonstration agents, home service directors. This Service sells the modern range by selling measured heat as an important ingredient in every recipe.

Thousands of requests for the Service have already been received. Thousands of teachers and directors will shortly be promoting range sales more effectively with its aid. Another big step forward in the merchandising of ranges!



And a big step forward in heat control! Complete control of both the supply of fuel (either gas or electricity) and the temperature of the oven – effected by the single simple operation of turning one dial.

ROBERTSHAW
THERMOSTAT COMPANY
Youngwood, Pennsylvania



PIECEMEAL OR PACKAGE?

Which Way Do You Buy?

THERE are TWO ways to buy electric equipment. You can buy piece by piece multitude of parts that make up a switch- installation, a substation, or other units your system. Or, you can purchase com- te factory-built, ready-to-install units. is is the "package" method. Its chief ad- ntages are that you receive fully co- inated equipment; you save greatly on ign and installation time; and over-all ts are materially lower.

neral Electric has led in the development "package" type equipments. Our engineers constantly working with yours to produce paratus which will best meet your require- nts for today *and tomorrow*. Among the tstanding achievements are: unit substa- ns that require much less space than con- ventional substations; cubicle and metal-clad switchgear that is smaller, lighter, and easier to install; improved secondary network units that require less space and greatly reduce installation expense; and many others.

It is General Electric's business as a leader in this *going* and *growing* industry to keep ahead and help to establish desirable trends in engineering, design, and production. The progress made in supplying "package" type equipment is evidence of the benefits which you receive from such leadership.

By your purchases of General Electric equipment, you have encouraged this progress and made it possible. This is a sure way to *further* progress—for the industry—and for your company.

GENERAL ELECTRIC

300-21B

CHEVROLET 1941 TRUCK

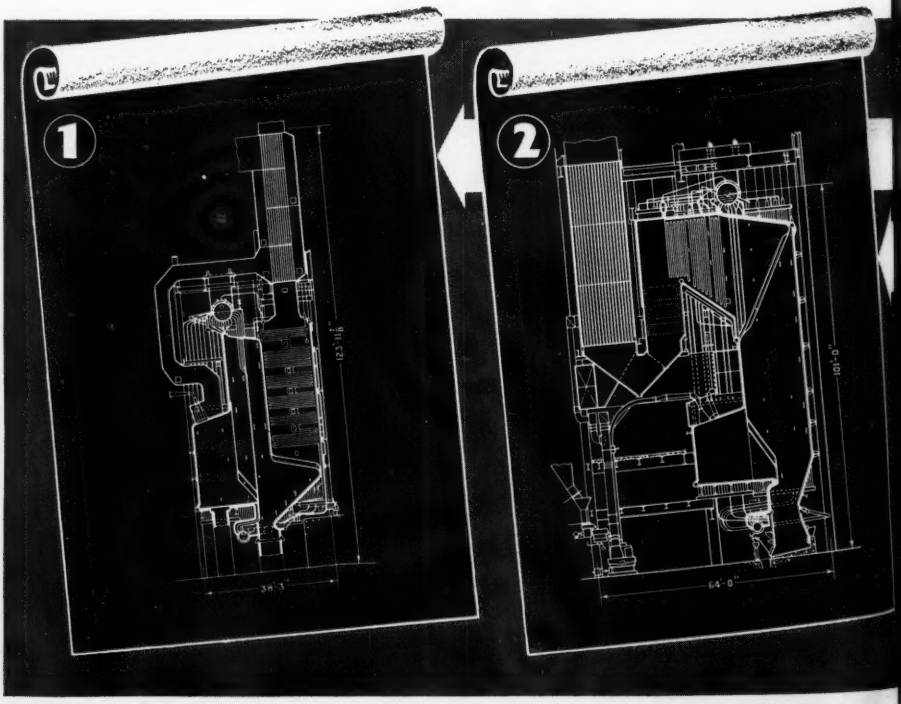
Out-Pulls Because Chevrolets have the most powerful truck engines in the low-price field and develop their maximum pulling power at low engine-speeds. You don't have to "race your engine" to lug your heaviest load. Chevrolet's Standard engine gives you 90 horsepower and 174 foot-pounds torque, and its special "Load-Master" engine for Heavy Duty models (optional at a small added charge) gives 93 horsepower and 192 foot-pounds torque.

Out-Values Because its 60 models on 9 longer wheelbases embody Chevrolet's traditional qualities of economy, reliability and long life, developed to new heights for 1941, plus such extra-value features as massive new truck styling, new recirculating ball-bearing steering, larger and more comfortable driver's compartment.

Out-Sells Because the nation's truck users have learned that Chevrolet is the best buy, as an investment that will pay the maximum dividends in high-efficiency operation at low cost, and have backed their judgment by making Chevrolet the sales leader year after year.

CHEVROLET MOTOR DIVISION, *General Motors Sales Corporation*, DETROIT, MICHIGAN

Statistics and Trends of Central-Station Boilers



Some interesting high-lights are thrown on central-station steam-plant practice by a study of a sufficient number of high-duty boilers ordered during recent years to warrant an interpretation of certain trends.

For example, as to the steam capacity of individual units—

76 B&W boilers of the Open-Pass, Radiant and High-Head types are in service or on order.

Total capacity—33,000,000 pounds of steam per hour.

3 have a capacity of 900,000 pounds each.

2 are for 750,000 pounds each.

28 are rated at 500,000 pounds and over.

Of the boilers ordered in 1940—

All but one are for 300,000 pounds and over.

50 per cent are for 500,000 pounds and over.

Pressure trend indications—

55 are for pressures above 1000 pounds.

One unit being built is for 2500 pounds.

67 per cent of the units ordered in 1940 are for pressures above 1000 pounds.

Temperature statistics—

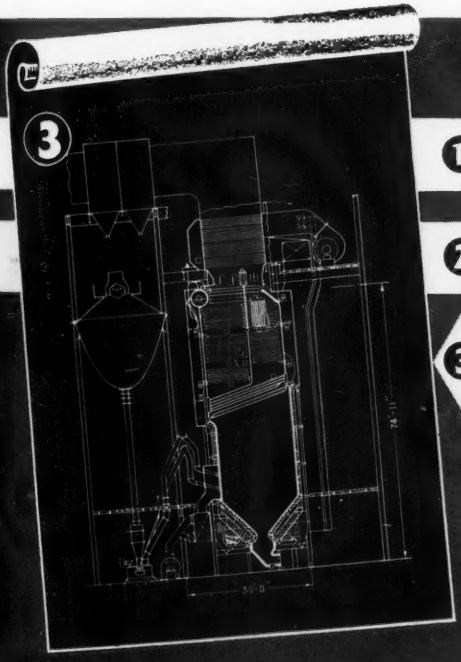
All but 2 of the 76 boilers are for steam temperatures above 800 F.

87 per cent are for steam temperatures at or above 900 F.

Only 2 of the 1940 units are for temperatures below 900 F.

Units of each of the three types in service for periods ranging from one year to five years have demonstrated not only their ability to satisfy the requirements of their individual operating conditions but also the ability of the three types to meet the exacting requirements of present-day central-station service.

THE BABCOCK & WILCOX COMPANY, 85 LIBERTY ST., NEW YORK, N. Y.



1 24 Open-Pass Boilers in service and under construction

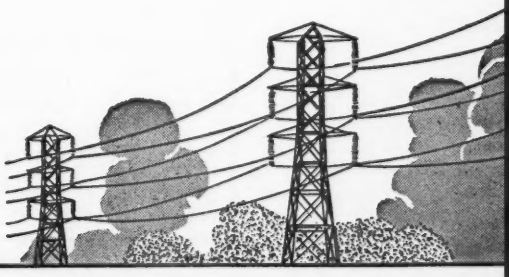
2 30 Radiant Boilers in service and under construction

3 22 B&W High-Head Boilers in service and under construction

BABCOCK & WILCOX

G-194 T

Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews



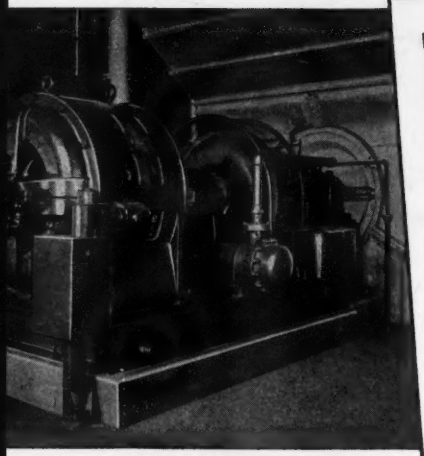
HOOSIER ENGINEERING COMPANY

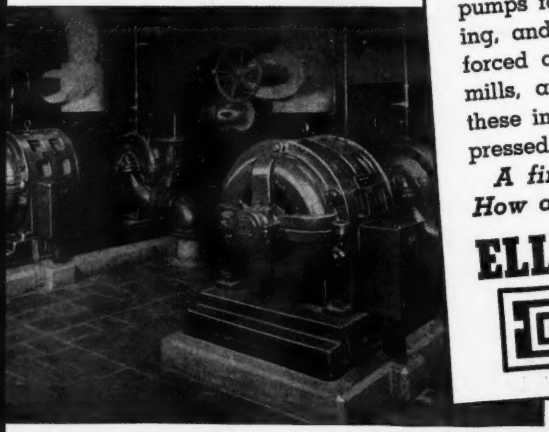
CHICAGO — 46 SO. 5TH ST., COLUMBUS, OHIO — NEW YORK

Canadian Hoosier Engineering Company, Ltd.
Montreal

ERECTORS OF TRANSMISSION LINES

A fine plant *deserves* fine motors





ELLIOTT MOTORS for

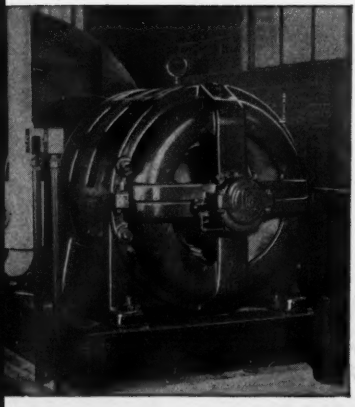
Bryce E. Morrow Station of Consumers Power Company

Opened officially last November, this fine station uses twenty Elliott motors, ranging in size from 75 hp. to 800 hp. These motors are driving such essential auxiliaries as pumps for boiler-feed, condenser, circulating, and ash sluice service . . . fans for forced and induced draft . . . pulverizer mills, and exhausters. The excellence of these installations is in some measure expressed in the illustrations on these pages.

A fine plant deserves fine motors. How about yours?

ELLIOTT COMPANY

Electric Power Dept.
RIDGWAY, PA.
District Offices in Principal Cities
L 721a

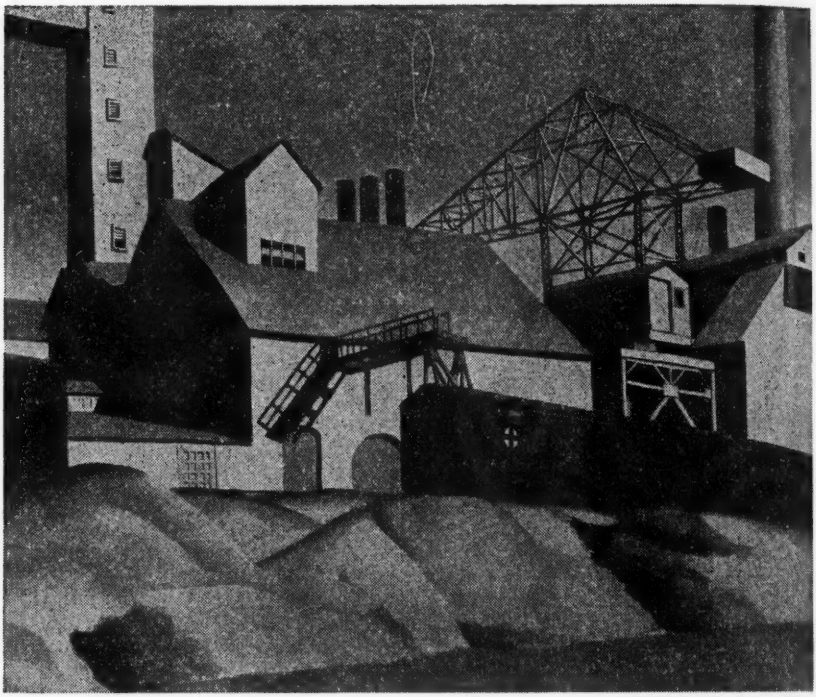


ELLIOTT *builds* fine motors

Utilities Almanack

FEBRUARY

13	Th	¶ *American Railway Engineering Association will convene for session, Chicago, Ill., Mar. 11–15, 1941.*
14	F	¶ *New England Gas Association, Industrial Division, begins convention, Worcester, Mass., 1941.*
15	Sa	¶ *American Gas Association will hold conference on industrial gas sales, Baltimore, Md., Mar. 13, 14, 1941.*
16	S	¶ *Oklahoma Utilities Association will hold session, Tulsa, Okla., Mar. 17, 18, 1941.*
17	M	¶ *EEI Transmission and Distribution Committee opens meeting, Detroit, Mich., 1941.* ¶ *National Electrical Manufacturers Association convenes, Chicago, Ill., 1941.*
18	Tu	¶ *Texas Telephone Association will hold convention, Fort Worth, Tex., Mar. 19–21, 1941.*
19	W	¶ *American Water Works Association, New Jersey Section, starts meeting, New Brunswick, N. J., 1941.*
20	Th	¶ *New England Gas Association, Accounting Division, opens convention, Boston, Mass., 1941.*
21	F	¶ *American Water Works Association, New York Section, will hold convention, Syracuse, N. Y., Mar. 27, 28, 1941.*
22	Sa	¶ *New England Gas Association will hold meetings, Boston, Mass., Mar. 27, 28, 1941.*
23	S	¶ *Missouri Valley Electric Association will hold meeting, Kansas City, Mo., Mar. 27, 28, 1941.*
24	M	¶ *Edison Electric Institute will hold annual sales conference, Chicago, Ill., Mar. 31–Apr. 4, 1941.*
25	Tu	¶ *American Society of Mechanical Engineers will hold spring meeting, Atlanta, Ga., Apr. 1–3, 1941.*
26	W	¶ *Mid-West Gas Association will convene, Minneapolis, Minn., Apr. 14–16, 1941.*



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Cement Plant

By Paul Sample

Public Utilities

FORTNIGHTLY

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Utilities and the War

Experience under actual combat in Europe a valuable guide as to what can be done to safeguard power, water, telephone, and gas services here in case of attack

BY HERBERT COREY

FOR five months the military authorities, representatives of the various types of utilities, and heads of government bureaus, have been considering this question:

"How can the utilities be protected if this country goes to war?"

It is probable that not one of the men engaged in this inquiry believes in his heart that there is even a remote possibility that the United States will get into a "shootin' " war. But the fact remains that the Foreign Policy Association—responsible and not emotional—has stated that while it is highly improbable it is not "wholly inconceivable" that we may be forced in either of our own will or through irresistible circumstances. The nation is engaged on a great defense program, which is planned to cover not only the business of making us safe for the day, but to prepare our defenses for the future.

The absolute necessity of defending our power plants is beginning to be appreciated in responsible quarters. "Electric power stations," *The New York Times* said editorially, "are among the principal targets of British bombers. The reason is Germany's complete dependence on electricity for the production of ersatz goods.—When Hitler became Chancellor in 1933 the production of electricity was about 25 million kilowatt hours. By 1943 a consumption of 100,000 million kilowatt

hours is expected.—The blockade accentuates the problem, because it means that more and more ersatz goods must be made, which already require disproportionately large quantities of electricity. A bomb that bursts an electric power plant asunder therefore spells local industrial disaster."

American authorities are not being slowed up by the fact that long before this country is in any danger of getting into a shootin' war we may be back on buying and selling terms with Germany. But the fact is that while they would like to make our utilities safe as churches used to be, they have not found out how to do it. Not any more than Germany or England or the banged-about continental countries have. When inquiry is made the officers are apt to take refuge behind that standard breastplate for stuffed shirts:

"Can't give you any information. It's a military secret."

PROGRESS has been made, however. Progress in recognizing what the job is and the importance of the job, and the distressing results of a failure to do the job well in the event of war. It has at least been accepted that no protection—in fortifying or reinforcement or digging underground—can be set up for the utilities. The job would be too big. This country has more lines of telephone and telegraph wires, more miles of conduit and water supply tunnels and sewerage disposals, more miles of power and light cables and oil and gasoline and gas pipe lines, more oil wells, derricks, refineries, tank farms, oil docks, and tank steamers than all the rest of the world put together. We depend on our utilities as no other country does. Germany has been able to accomplish her rearming miracles because of her abundant use of electricity in industry, but we rely on it in our daily life. Even remote farmhouses are equipped with hot and cold water, cow-milkers, wood-saws, cream-coolers, lights in the barn for the early-rising hired hand, china bathtubs, and arrangements to save Grandma a trip down the garden in the cold night air. In the palace of Laeken outside of Brussels, Belgium, King Leopold used to entertain royalty, statesmen, and pretty women. The palace was something between Number Ten Downing Street and the House of All Nations, and was plush, luxurious, and fancy simply no end. In the palace there were only three bathtubs for host and guests. There were, however, five large-sized copies of the Temptation of St. Anthony.

Those facts seem to make the differences between Europe and this country somewhat more clear.

ASSUMING that this country cannot be invaded, even if a fast cruiser might manage to decant a few hundred soldiers at some spot on the coast, it is an unquestioned fact that our coastal cities might be raided. We have the finest Navy in the world today and five years from now it will be twice as good as it is today. But the Navy has two coast lines to defend, and the Panama canal; and if we were to get into a war it would be utterly impossible to escape more or less hit-or-run raiding. A 40-knot aircraft carrier could dash somewhere near one of our big seacoast cities, loose a swarm of 400-mile-an-hour bombers, bang unmitigated hell out of the city in twenty minutes, and get back on board and the carrier off

for the protection of its battleship fleet almost before one of our Admirals could say Jack Robinson. This is said not in derogation of our Admirals or suggesting a deficiency in our Navy, present or to come, but only to make it clear that speed will be the motif of the next war. The present war has been pepped up to an mph never before dreamed of, but it will be a snail and a slug compared to the speed that will soon be delivered to the fighting men. Six months ago we had the fastest planes on earth. Today in England they are too slow.

A raided city can take it, world without end. London and Barcelona are proofs, not to speak of Coventry and Birmingham. But the more the utilities are hit the harder it is to take. When light fails and the gas mains must be shut off and water does not come through the pipes and the sewers clog and overflow, evacuation is the next order of the day.

No city has yet been evacuated, but that seems only to be a proof of the courage of men and women. As yet there has been no outbreak of pestilence anywhere. When that comes, in a city black by night, waterless by day, filled with the inevitable stenches, that city must be abandoned.

If it comes.

"We know," said an officer of rank, "what we can do today for the protection of utilities. That is nothing. Nothing except hide them as best we can. That is nothing, too. The only thing any nation or city can do in the event of war is to trust to luck. Luck alone has protected London.

"Not one of her great power plants had been hit at last accounts. Her water supplies have not been greatly interfered with. Not one of her bridges has been hit, so far as we have been informed, although they are the best targets imaginable. The Nazis have been bombing at such targets relentlessly, but accuracy is not yet possible in bombing. The American bomb sight, of which so much has been said, is probably no better than any other bomb sight, for the reason that daytime bombing is not practicable in face of the improved methods of defense, and in nighttime bombing the best sight is no better than any other sight. The bombs are released hit-or-miss, anyhow. If our coastal or near inland cities were to be raided in time of war, we would be in precisely the same fix the British are, except that the raids would be fewer because of the necessity of sending out the bombers from ships, which would be under the constant danger of attack from our Navy.

"Therefore we are looking more to the future than to the present in our planning.

❦

¶ "THIS *country has more lines of telephone and telegraph wires, more miles of conduit and water supply tunnels and sewerage disposals, more miles of power and light cables and oil and gasoline and gas pipe lines, more oil wells, derricks, refineries, tank farms, oil docks, and tank steamers than all the rest of the world put together. We depend on our utilities as no other country does.*"

"IT is safe to say that in twenty or twenty-five years—the war cycle seems to be roughly that period—speed in air, on land, and through the water, will have been tremendously stepped up. The plane manufacturers speak vaguely of 600 or 700 miles an hour. Fifty miles an hour will not be an impossibility for the battle cruisers, and mechanization of the armies will be carried as far as humanly possible. Along with the added speed will be the additional destructive power of bombs and shells which may be confidently anticipated. If we are to contemplate the possibility that the next time the world runs hog-wild it will have infinitely more dangerous forces at its command, and we are unable to protect our utilities against them, or to hide or camouflage them, another alternative must be provided."

It is humanly impossible, he said, to protect utilities.

"A powerhouse," he said, "could be hidden in a shell of concrete, which could be made thick enough to protect it against any possible destructive force. But no privately owned company can afford to spend the money required. Not even a nation could spend that much. It simply would not be practicable to make all the powerhouses impregnable. There is not enough money in the world and, in the event of war, there are other and more pressing needs for money.

"A tank farm could be partially protected by blocking off each tank from every other tank. Again the cost is prohibitive. The same statement may be made with reference to oil docks, refineries, pumping stations, the innumerable activities engaged in providing this country with the luxuries we regard as commonplace necessities. Hydroelectric plants would be the points of immediate attack in the improbable event of war. A bomb placed on a big dam would ruin the dam, which could not be rebuilt under a threat of attack, flood the lower valley, and put the turbines out of commission for the production of energy."

UTILITIES, he said, are unfortunately not mobile.

"We cannot load powerhouses on trucks or roll up wire cable or shift sewerage systems."

So what, General?

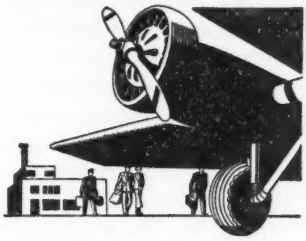
"If we are to go at the job of defending our utilities against destruction in the event of war—I am now entering the domain of pure theory—the only thing we can do is to arrange an intricate system of shifts and cut-offs. If the pipes and conduits and cables in one area are blown up, services could be restored by rerouting, plus the possible use of mobile power and pumping plants."

That idea, he said, has a close relation to paresis.

"It would cost too much in time of peace, even if the government could stand the cost—which our government would not be able to stand after we have gotten through with our present program. Private investors certainly would not put a penny in such a program, for they would be concerned with getting back some of the money the preceding war had cost them."

To get down to hard-pan, then, if there is any way to defend the utilities in wartime, it continues to be a "military secret."

This is not a report of hopelessness, however.



Hysteria over Sabotage

"THE FBI constantly warns Americans against hysteria in this matter of Reds and Communists and saboteurs generally. The evidence is that the fires and accidents encountered in industrial plants have been principally due to the carelessness of newly employed workmen and the rush of hurried preparation. There have been saboteurs, no doubt, and will be others, but the FBI advises Americans to be sure before they leap on a suspect."

Granted that utilities can neither be hidden nor defended, it is still the case that no matter what might happen—in the extremely improbable event that this country should be attacked—they can continue to function. No better evidence of this fact can be offered, perhaps, than the record of the Bell Telephone Company during and immediately after the New England hurricane of 1938. Eight states were affected. Floods preceded the hurricane, a tidal wave followed it, and fires mopped up after it. Yet it is within common recollection that telephone service was restored in an incredibly brief time. This was primarily due to the fact that the Bell Company was able to call in trained manpower from all over the United States. As men were sent from Ohio, others from farther west and south replaced them, and they all knew their business. Everything was exchangeable, from men to rivets. A Texan landed in Providence would be dealing with a mechanical equipment with which he was perfectly familiar.

No war could do one-twentieth of the damage that water and wind and fire did to New England's telephone systems. Perhaps not one-hundredth of the injury.

The various bodies studying the problem of the protection of the utilities in the—still improbable—event of war have paid especial attention to the Bell Company's records, not only in the New England hurricane but in the other great natural disasters the company has been forced to face. A sleet storm, for example, often does as much damage as might be anticipated in a battle, and covers a much greater area. The War and Navy departments control these studies, naturally, and are being aided in greater or less degree by the FBI, the FPC, the FCC, the Mari-

time Commission, the National Defense Advisory Commission, and select committees from the National Petroleum Institute, the various communications companies, such as the AT&T, the IT&T, the RCA, the WUT, and others of more limited scope, and the labor organizations.

The Army Engineers have drawn up suggestions to the utilities for guidance in the event of war, but these are necessarily only suggestions. They will not be made mandatory until and unless conditions seem to make it imperative, and at the most they can only be considered at present an exploration of the situation. The Army, for instance, favored deep underground electric service, but so far as has been learned from London this may not prove the most desirable. Deep conduits are a greater protection against bombs, but more of a nuisance when a bomb does blow them up. Shallow conduits may prove to be more satisfactory. Above ground wires have resisted damage unexpectedly well, and the automatic cutoffs have prevented injury from live wires in the event of a break.

But that question has definitely not been settled, and will not be until more information has been had from the bombed cities of England.

FOR years certain political elements have been clamoring for the Big Grid. In effect this would be a linking of great power stations, in order that interruptions to service shall be as quickly repaired as possible. The proponents of the Big Grid urge, of course, that the government-built hydroelectric works shall be the anchors of such a system. The British, however, seem to favor smaller and more numerous power stations rather than fewer and larger, in order that the injuries inevitable in a bombing war shall be as slight and easily repaired as possible. If London's one great station near Westminster should be knocked out, a fifth of the city would go dark, whereas if one small powerhouse were to be destroyed, its load could be picked up almost immediately by its neighbors. It might be a bright idea to send a group of mixed military and civilian engineers to London to study this question on the spot. The decision reached by such a group would probably be more workable than any plan to be formulated by either the military or civilian half. The one conclusion on which all British engineers seem agreed is that utilities should have an abundance of spare parts and trained men at hand ready for any emergency. The Bell Company has been following that rule for years. At a recent meeting of the New England Waterworks Association such a plan was strongly urged by Colonel W. F. Rockwell, president of the Water and Sewage Works Manufacturers Association. He said in part:

> Develop reserve and independent units which can be operated if the main system breaks down from any cause. Protective lighting equipment for emergency use at key points now is on the market. Install reserve pumping units for water and similar emergency equipment for other public services.

THE war in Europe seems to have established the importance of the much abused holding company beyond any question. Holding companies seen through Norrissian spectacles are direct descendants of the old-time river barons who robbed every traveler. The fact seems to be that the smaller electric light companies suffered more than did the component elements of the

holding companies. They lacked men and material for prompt repairs and the protective interconnection which is possible to companies incorporated in one great company. This fact was strikingly brought out by the recent statement of Dannie Heineman, president of "Sofina," the great utility company which

"Has, or had, its head office in Brussels, Belgium. It is a holding and service company with interests in a number of European countries, in Argentine and Mexico, in Northern Africa, and to a small extent in the United States. The annual output of the associated companies in 1939 totaled over 7,500,000,000 kilowatt hours, and the figure of their installed power, water, and steam, is somewhere between three and four million kilowatt hours."

So far as he is informed, no European utility had taken any precaution against the danger of invasion or bombardments. Nor did the local authorities show any greater prescience, except that after hostilities began some hydraulic power stations were ordered to empty their reservoirs for fear the lower reaches might be flooded if the dams were destroyed. No local company seems to have laid in spare parts or equipment, or to have increased its fuel inventory. The works in the Paris area relied on England to provide coal, and for a part of their power on the Truyere station in Central France, a hydraulic which in winter is interconnected with Swiss and Pyrenean lines, which at that season would be deprived of power through the freezing of the mountain rivers.

THE British government, he said, had been "rationalizing electricity under the Grid system during the past few years. Some minor power stations still survive in the London area. They are uneconomic and destined to disappear in due course, but as it happens they constitute today, under abnormal conditions, a valuable standby should the large modern works be put out of commission."

His observation is that destruction of utility properties by bombing has been less serious than expected, and this conclusion is based not only on recent European events but on the two and one-half years' civil war in Spain. It can hardly be that this comparative immunity is due alone to luck. It must be that electric installations are by reason of material and construction less damageable than, for example, hotels and warehouses. Bomb damage to solidly constructed, steel frame buildings is apt to be extraordinarily light, although streets are torn up and small houses destroyed by bombs of the same caliber. An authority states, for instance, that the great skyscrapers of New York city would probably withstand the most intensive bombing, al-

¶ "WE *have the finest Navy in the world today and five years from now it will be twice as good as it is today. But the Navy has two coast lines to defend, and the Panama canal; and if we were to get into a war it would be utterly impossible to escape more or less hit-or-run raiding.*"

though artillery fire might tell another story.

"A large holding company, such as we conceive of it in Europe," he said, "carries on staff work for its associated companies, a task the fulfillment of which implies for those in charge more careful forethought when war is threatening and watchful guidance when war is on."

WHEN Brussels was awakened by the sound of the first "protective" bombs, a selected staff of "Sofina" started at once for Ypres in Flanders, where offices had been prepared in advance. The military forbade use of the telephone, and after a time "Sofina" shifted to Lisbon, where other offices were in waiting. Intermediate stops were made in Biarritz and Madrid. "All the officers and employees of our company that had left Brussels, numbering close to 200 with their families, successfully negotiated the passport barriers which have retained so many people in France against their will." Portugal is the only country in Europe now from which "Sofina" can keep in touch with its many companies. Without the parent company the affiliates would have been helpless in many cases. The holding company built up reservices of fuel in the Argentine long before the war, and was able to translate the sheep in which its Turkish affiliates were sometimes paid by their subscribers into money for expenses and dividends. From the hardest experience Mr. Heineman arrived at this conclusion:

"International investments of capital and the technical experience which is usually applied to the management of these investments, are equally beneficial to the country that invites or accepts foreign enterprises and to the country which enjoys this form of hospitality."

ONE of Mr. Heineman's comments is of especial interest to Americans:

"Anarchical sabotage did more harm to Sofina's properties than the war itself."

The FBI constantly warns Americans against hysteria in this matter of Reds and Communists and saboteurs generally. The evidence is that the fires and accidents encountered in industrial plants have been principally due to the carelessness of newly employed workmen and the rush of hurried preparation. There have been saboteurs, no doubt, and will be others, but the FBI advises Americans to be sure before they leap on a suspect. Obvious precautions should be taken, of course. Most of the communications' centers, for instance, are protected against crackpots who might do as much harm as the foreign criminals who inspire their lunacies. Some utilities are considering strengthening powerhouse roofs with steel columns, in order that—still in the unlikely event of war—a heavy layer of concrete or sandbags can be used for protection.

Windows will — if and when — be sandbagged for protection against shell splinters. Not much attention will be paid to camouflage, for any enemy flyer who raided us would be provided with aerial maps in which locations would be shown with reference to rivers, railroads, and highways. If and when we were to be thrust into war, subterranean refuges for vital operations would be provided, as well as for oil

and gasoline storage. Pipe lines are regarded as unprotectable. If a line is broken the flow of oil can be shut off instantly and the break repaired in almost no time. In surveying the formless plans for the protection of utilities in time of war one is forced to agree with the military officer previously quoted.

Of course, we hear of interesting ideas, such as the paper recently prepared for the Philadelphia meeting of the American Institute of Electrical Engineers by C. A. Powel and H. G. Barnett, of the Westinghouse Electric & Manufacturing Company. Messrs. Barnett and Powel described a system built like a spider web, designed to make industrial power plants invulnerable to attack from within and without. But this American invention, while protecting the nerve center of an industrial plant's distribution, and, to some extent, its transmission, doesn't do very much good for the generating plant, where the power is actually made—perhaps miles distant. Even so, it is well worth notice.

Seems the ordinary distribution system spreads out like wagon-wheel spokes from a central hub at the end of the "high line." This hub is the transformer for stepping down the current to practical requirements. Obviously, injury to the high line, or even one of the spokes, can do a lot of damage in such a distribution set-up.

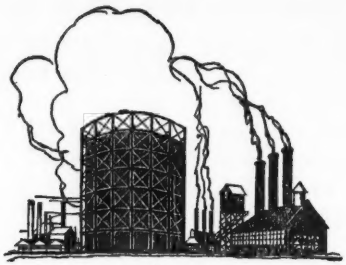
But the Westinghouse men pointed out that the spider web system interconnects the spokes in such a way that the severing of one or more cross wires would have little or no effect. Furthermore, instead of using one transformer hub, a number of small transformers scattered over the plant and fed from two or more scattered high lines further minimize the danger of power failure, even by the luckiest bomb hit. And it would take a determined, well-organized gang of saboteurs to put such a system out of commission. They're cheaper, too.

Incidentally, this American invention, which is now being installed in the Portsmouth Navy Yard, has already attracted the alert attention of the Nazi technicians. On a business trip to Germany in 1938, Mr. Powel noticed evidence of copying.

Then there is the floating power plant, which was so well publicized a few months ago. The idea would be to rig up generating systems on ships small enough to pass through the New York Barge Canal into the Great Lakes and stout enough to navigate our coastal waters. They would function as stand-by power reserves for any city near enough to the water's edge to use them. The trouble is, the majority of our cities are not on the water's edge, and our shipyards are already so busy building real battleships that such units could hardly be expected to be finished before the present international crisis will have been resolved one way or the other.

No, after considering all these interesting ideas and suggestions, on the whole we are constrained to revert to the rather melancholy finding that there is no absolute bombproof, foolproof protection for utility facilities.

But the Bell Company showed the way when it standardized its matériel and trained its men. American speed and discipline would patch the breaks, just as the repair crews in London are tying the ends together while the bomb crater still smokes.



Natural Gas, the Ugly Duckling

A discussion of the factors behind the present adverse attitude toward the natural gas industry and a prediction of a basic change thereon

By W. D. GAY

EVERY large family has its "ugly duckling," whose merits are appreciated only after a long and oppressed existence. The utility family is no exception; natural gas is its abused duckling.

With the exception of holding company issues, securities of other divisions of the utility industry have long enjoyed good reputations. Electric, telephone, and water issues have always been highly regarded by investors, and their bonds enjoy the highest-grade ratings.

Even manufactured gas securities are well thought of by loyal New Englanders. But comparatively few investors appear to have a good opinion of natural gas securities.

From the standpoint of pure statistics, the natural gas industry has been by far the most profitable of the utility industry over the past decade. As the following comparison between 1939 and 1931 results would indicate, the natural gas industry has fared substantially better than the highly regarded electric industry:

	Per Cent Change 1939 v. 1931	
	Electric	*Gas*
Gross Revenues	+10.5%	+23.0%
Operating Income	—13.6	+28.0
Net Income	—20.9	+41.2

Its revenue growth during the period has surpassed that of the electric industry, and more important, it has carried a much larger part of the gain in gross down to net income.

Notwithstanding the above fine record, natural gas stocks sell at comparatively low ratios to earnings. Furthermore, the industry has been able to sell relatively few preferred stocks, and its bonds are accorded investment ratings only with tremendous sinking funds and rigid indenture restrictions. One of the better known rating services, for example, recently gave a new natural gas pipe-line bond no better than an A quality rating, despite the fact that the latter covered its bond interest around 10 times. Even the state regulatory bodies seem to take a tolerant attitude toward natural gas companies, because of their questionable credit position.

The writer has long been intrigued

by the paradox of excellent earnings and bad reputation, and accordingly conducted a survey of the reasons therefor during the past few months. The procedure was to ask as many investors as possible their opinion of the natural gas industry and the reasons behind such an opinion. The general consensus clearly was that the industry was risky, since it was an extractive business, and since there was considerable uncertainty over the life of its reserves. Other less frequent reasons advanced for an unfavorable opinion were the numerous receiverships in the industry during the depression, the burdensome manufactured gas heritages, excessive capitalizations, etc.

It goes without saying that the extractive nature of an industry need not damn it, if gas reserves are adequate. The oil industry, for example, enjoys a good reputation; in fact, its bonds are accorded the highest investment rating. Yet the oil industry is not only extractive but very competitive as well.

As regards natural gas reserves, there are, of course, no accurate figures thereon, since new supplies are being constantly developed. The most authoritative study on the subject is believed to be the 1939 report of the Energy Resources Committee to the National Resources Committee. This report, using estimates of R. E. Davis and other gas experts, arrived at the conclusion that the natural gas reserves in this country probably amounted to 100 trillion cubic feet. On the basis of present consumption of around 2.4 trillion cubic feet annually, this would indicate a life of more than forty years for the gas reserves.

The important thing to bear in mind in connection with the above estimate is that it represents a *minimum,* for no one has undertaken to estimate maximum gas reserves in the United States. Gas engineers have advised the writer, nevertheless, that reserves in some of the fields on which they specialize probably are three times as large as the estimates contained in the Energy Resources Committee report thereon. It is quite likely, therefore, that maximum estimates of natural gas would be substantially above 100 trillion cubic feet, and may be closer to 200 trillion, or an 80-year supply on the basis of present annual consumption. In short, there is no reason whatsoever for concern relative to the adequacy of natural gas supplies in this country.

It is pertinent to note, however, that most of the gas reserves are concentrated in the Southwest and in California. Gas experts estimate that about one-quarter of the total natural gas reserves are in the Texas Panhandle field and the adjacent Oklahoma fields, with most of the remainder in the Hugoton field of Kansas, the California fields, and the Gulf coast fields. A breakdown on a percentage basis of the gas reserves in the country by individual fields would be roughly as follows:

	% of Total
Texas Panhandle, Inland Texas, and Oklahoma	24%
Hugoton	20
California	30
Gulf Coast & North Louisiana	17
Appalachian	7
Others	2
Total	100%

While fairly large reserves exist in the Appalachian field in the East, production costs in the latter are relatively

high, for the reason that the field is rather shallow and numerous dry wells are encountered. With favorable demand conditions, natural gas probably can be brought from the Panhandle field in Texas or the Hugoton field of Kansas to serve the eastern markets about as cheaply as they can be served by Appalachian gas. It is to the West, therefore, that markets must turn for their gas supplies.

Quite significant is the fact that not only are our natural gas reserves in the West adequate for a long period of time, but also there is a constant pressure to bring these supplies to the market. In their unwarranted concern over the adequacy of gas reserves, most observers have failed to realize that there is actually a serious problem of surplus natural gas.

THE above situation results in part from the fact that almost one-half of the natural gas sold represents a by-product of oil production. State conservation laws prevent the waste of this by-product gas, so that the oil companies must find a market therefor or face the possibility of being forced to restrict their oil production. Many oil companies have resorted to repressuring practices, which involve pumping the by-product natural gas back into the pool from which it was obtained. But this procedure has only partially solved the problem of disposing of by-product natural gas.

In the straight natural gas fields where no oil is produced, efforts are made to prorate natural gas production. But there still is an active desire on the part of producers to get as much gas as possible out of the pools before the latter are drained by adjacent wells. In the Panhandle and Hugoton fields, one well can drain gas from more than 2,000 acres, since there is free migration of gas.

This all spells overproduction and a resulting buyer's market for natural gas. According to current indications, furthermore, this situation is likely to become aggravated in the future by the increasing use of the polymerization processes to recover high-octane gasoline and organic chemicals from natural gas. For only about one-fifth of the natural gas by volume is converted in these processes, thereby leaving almost 80 per cent of the gas (mostly methane gas) as a by-product. The latter can be used only as a fuel for pipe-line distribution.

THE big users of the polymerization processes are located principally in the Mid-Continent, California, and Gulf coast areas, and are expected to push volumes of by-product gas on the market in future years. Hence, it will be necessary to find new outlets.

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Because of the pressure of surplus gas, it is reasonable to expect natural gas eventually to be distributed in every section of the country where such distribution is economically feasible. Incidentally, the fact that natural gas is not distributed in New England, most of the Middle Atlantic states, and parts of the Middle West and South does not mean that these areas cannot be economically served. For long-distance transportation of natural gas began only in 1926, when seamless steel pipe was made available for the purpose and the large gas reserves in the Southwest were first developed. As a result, the industry is still in the developmental stage.

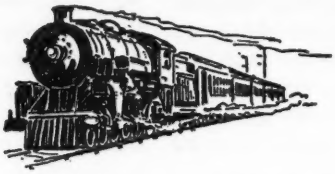
While the public generally, and the investing public in particular, appears to have a wrong slant of the natural gas picture, this presumably is not true of the Federal Power Commission, which was given authority in 1938 to regulate interstate wholesalers distributing natural gas for resale. For this commission has apparently taken the attitude that since gas reserves are adequate, the natural gas industry is no more speculative than other divisions of the utility industry.

The FPC has participated in all important rate cases involving natural gas wholesalers subsequent to the passage of the Natural Gas Act in 1938, and last July handed down a widely publicized opinion in the rate case involving Natural Gas Pipeline Company of America. This case, on which the testimony amounted to over 10,000 pages, involved rate action brought by the Illinois Commerce Commission against Natural Gas Pipeline Company of America and its affiliate, Texoma Natural Gas Company.

QUITE surprising (in fact almost amazing) was the opinion of the Illinois Commerce Commission as to what constituted a fair rate of return in this case. Mr. Kleinman, expert accountant and chief witness for the state commission, testified: "From the point of view of being absolutely sure that I was giving a liberal return, one that I could substantiate from any point of view, I finally decided on 6 per cent." In other words, in the opinion of Mr. Kleinman, Natural Gas Pipeline Company of America should be allowed the same rate of return as that recently allowed the eminently strong Safe Harbor Water Power Company by the FPC.

This witness went on to say that the business of Natural Gas Pipeline Company was less risky than that of Commonwealth Edison Company, which is generally recognized as one of the strongest electric operating utilities in the country. There is no doubt that this comparison with Commonwealth Edison Company (whose initial property was built in 1887) is slightly exaggerated. Nevertheless, it does not necessarily follow that the business of Commonwealth Edison Company is substantially less risky than that of Natural Gas Pipeline Company of America; as a matter of fact, the credit rating of the latter (which after all is the real test of risk) is probably fairly close to that of the electric company.

While the 6½ per cent rate of return finally allowed Natural Gas Pipeline Company of America by the FPC compared rather closely with the 6 per cent return requested by the Illinois Commerce Commission, it cannot be assumed that the former represents what the FPC believes to be a fair rate of



Opposition of Railroads to Natural Gas

"OPPOSITION *of railroads to natural gas is easily understood, as coal provides about one-third of total railroad traffic and about 17 per cent of gross revenues. The hard-pressed railroads have already lost a tremendous amount of business to the oil pipe lines, and are fully aware of the serious threat posed by the growth of natural gas pipe lines.*"

return for a natural gas company. In cases where the risk is greater than in the Natural Gas Pipeline Company of America situation, the commission doubtless will allow a higher rate of return, although the writer understands that the FPC has as yet formulated no definite policy as to what constitutes a fair return, since there seems to be a difference of opinion among the members of the commission on the subject. Commissioner Scott, for example, is credited with the opinion that a natural gas company should be allowed to earn no more than 6 per cent on its rate base, with a 5 per cent to 5½ per cent return more in line. Other commissioners are reported to be more generously minded.

NOTWITHSTANDING the possibility that the opinion in the Natural Gas Pipeline Company Case establishes a ceiling for profits of pipe-line companies, there has been no diminution in the desire to carry natural gas to new markets. Three companies, for instance, desire to bring natural gas into the Milwaukee region, which is now served with artificial gas. One of these companies, Natural Gas Pipeline Company of America, proposed to run an extension from its Chicago pipe line to Milwaukee. Another company, Independent Natural Gas Company (a subsidiary of Phillips Petroleum Company) would build an 877-mile line from the Panhandle field to serve the city. The third company, Western Natural Gas Company (which is headed by Paul Kayser, president of El Paso Natural Gas Company), would build a 770-mile line from the Hugoton field to serve Milwaukee.

The decision as to which of these three companies will serve the highly desirable Milwaukee market with natural gas rests with the Federal Power Commission. Natural Gas Pipeline Company of America originally claimed that the FPC had no jurisdiction in the matter, since Milwaukee would be a new market not currently served by any pipe line. But the company subsequently has apparently

changed its attitude and now seems willing to abide by the decision of the Federal Power Commission.

Another long-distance pipe line proposed is the 1,040-mile line planned by Kansas Pipe Line & Gas Company from the Hugoton field to the Mesabi iron range in Minnesota. Whereas it is virtually certain that natural gas will be brought into Milwaukee, there is considerable doubt that the line of Kansas Pipe Line & Gas Company will be constructed. To begin with, the company has encountered considerable difficulty in raising the funds to finance this long line. Furthermore, it is questionable whether the whole project is economically feasible.

THE proposition is to use natural gas to concentrate low-grade Mesabi iron ores so that they could be shipped cheaply down the Great Lakes for use in steel manufacture. But the high-grade iron ore reserves in the region are so large that there is really no need to attempt to recover the low-grade reserves for some time to come. In any event, another pipe-line company, Northern Natural Gas Company (now serving Minneapolis) has been asked by the Federal Power Commission why it did not extend its lines to serve the Mesabi iron range.

Other long pipe lines proposed which may not be constructed are those of Tennessee Gas & Transmission Company and Reserve Gas Pipe Line Company. The former company proposes to build a 400-mile line from north Louisiana to serve eastern Tennessee and North Carolina. But this company is encountering difficulty in making arrangements to finance this new market and obtain necessary gas reserves.

Reserve Gas Pipe Line Company has a rather optimistic plan to build a 1,500-mile line from the Gulf coast field in Texas to serve New York city, Philadelphia, and New Jersey with straight natural gas. But here again, there is the serious problem of financing the project, although the sponsors claim they have access to the necessary funds.

With eminently favorable demand conditions, it would be possible, according to gas experts, to bring natural gas from the western fields into Pennsylvania, New Jersey, and even New England.

Because of the absence of a necessary, large industrial load, New York city is not considered as desirable a market for pipe-line natural gas. Some experts believe, however, that natural gas can eventually be brought to New York city through the use of the new liquefaction process.

THE latter process involves reduction of natural gas to a liquid state at the fields, carrying it in insulated tank cars to the markets, and then converting it again into natural gas for consumption. The advantages are that liquefaction reduces the gas to one six-hundredth of its original volume, thereby making transportation economically possible. In this manner, it is conceivable that a large eastern metropolitan area, such as New York city, with its poor load factor, could be served with natural gas. But, unfortunately, this process is still in the experimental state, and it is premature to express any authoritative opinion as to its practicability.

Rather singular is the fact that one of the strongest supporters of a new

natural gas pipe line to the East is Secretary of Interior Ickes. The latter's support, however, is not based on any desire to make this low-cost fuel available to the eastern utility companies; rather, he is concerned wholly with the important part that such a pipe line might play in our national defense program. For it would make abundant supplies of cheap natural gas available to the naval bases and defense industries in the East.

It is manifest that development of new markets for natural gas is by no means an easy task. As fully indicated in the case of the proposed lines to Milwaukee and Tennessee, extension of natural gas to new markets is strongly opposed by the coal interests, the railroads dependent upon coal, and the labor unions. Active opposition from the coal industry is only to be expected, since about every 20,000 cubic feet of natural gas sold replaces one ton of coal.

Furthermore, since labor costs represent over 60 per cent of the total mining costs of coal, the labor unions are strongly opposed to expansion of the natural gas industry. This opposition, additionally, is quite formidable, because of the widespread political influence of the unions as well as their aggressive lobbying tactics.

Opposition of railroads to natural gas is easily understood, as coal provides about one-third of total railroad traffic and about 17 per cent of gross revenues. The hard-pressed railroads have already lost a tremendous amount of business to the oil pipe lines, and are fully aware of the serious threat posed by the growth of natural gas pipe lines.

Fortunately for the latter, the Federal Power Commission has denied representatives of the coal, labor, and railroad interests the right to intervene in proceedings involving a proposed gas pipe line. For the Natural Gas Act does not recognize the right of intervention of outside interests in hearings thereon. This situation has manifestly restricted the opposition of these interests to the growth of natural gas.

A stimulus to the growth of the latter, on the other hand, has been the unfavorable public relations of the coal and railroad industries. The recurrent coal strikes have been quite instrumental in creating a desire for natural gas. Quite significant is the fact that natural gas is now distributed in all the important coal states where opposition to its use would appear to be the strongest.

Nevertheless, the ability of natural gas to expand its market despite the

¶ "While *the public generally, and the investing public in particular, appears to have a wrong slant of the natural gas picture, this presumably is not true of the Federal Power Commission, which was given authority in 1938 to regulate interstate wholesalers distributing natural gas for resale. For this commission has apparently taken the attitude that since gas reserves are adequate, the natural gas industry is no more speculative than other divisions of the utility industry.*"

opposition from the coal and railroad interests, the labor unions, and, in some cases, the manufactured gas companies is a real tribute to the numerous advantages it has over competitive fuels. From the cost standpoint, natural gas is a much cheaper fuel than manufactured gas and electricity. On the other hand, it is only moderately more expensive than coal and fuel oil. The lower cost of coal, however, is far outweighed by the greater convenience in the use of natural gas. Fuel oil, additionally, is not available in all sections of the country and is not as suitable for general residential use as is natural gas.

UTILITY men are manifestly most interested in the advantages that natural gas holds over manufactured gas. It is estimated in this connection that, on the basis of the same heat value (*i.e.*, BTU content), artificial gas in general is about four times as costly as natural gas. The substantially lower cost advantage of the latter is extremely important, since it permits the development of the large industrial and house-heating loads, not possible with manufactured gas. In other words, the primary cause of the retrogressive trend of the manufactured gas industry—*i.e.*, the inability to develop new outlets—is thereby overcome.

As a result of a changeover to natural gas, the character of a gas company's business changes completely from a predominantly residential cooking load to a well diversified business with a much better load factor. Because of the house-heating load developed, average residential consumption more than doubles. The lower cost of natural gas, furthermore, encourages the installation of gas refrigerators.

Current evidence suggests, furthermore, that a large air-conditioning load together with the refrigeration load would be an excellent offset in summer months to the seasonally low house-heating business of gas companies. Another offset to the seasonal decline could be obtained through the development of substantial sales of natural gas in the summer time for generating electricity, as proposed in Wisconsin.

PRESENT indications are that as the numerous advantages of natural gas are publicized, the market therefor should spread much further. Manufactured gas companies should lose their reluctance to change over to natural gas as the load-building opportunities of the latter become more apparent. Present large revenues from coke oven by-products, which are tending to discourage some companies from changing over, are manifestly temporary, since the price of coke will doubtless decline precipitately when the war is ended. Furthermore, most coke ovens are rather ancient and will need replacing, which will require substantial capital expenditures.

The main point to bear in mind is that there is ample natural gas in the West to satisfy requirements of any market in the country. The writer has roughly calculated, for example, that if *all* present customers of manufactured gas companies change over to natural gas (a very liberal assumption), present reserves of the latter on the basis of *minimum* estimates would still have a life of about thirty years. (This calculation, naturally, does not allow for potential consumption of natural gas by industrial companies now using coal, oil, or other fuels.)

In brief, natural gas should eventually assume the rôle of being virtually as necessary to the public at large as electricity. When the public comes to depend upon it and learns there is a tremendous supply of it, then the public will doubtless accept natural gas securities as high-grade investments. Such acceptance is, of course, necessary if securities are to be sold to finance further expansion of the natural gas market.

Unity of Effort

"*An ill-considered policy of industrial relations by a single company or one unjustified strike in an important manufacturing plant now engaged in carrying forward the national program can conceivably throw our whole economy out of equilibrium and have far-reaching and serious repercussions. In these days there is general recognition of the right of labor to enjoy collective bargaining, to receive fair compensation, and to continue to possess such other advantages as are commonly recognized as fairly belonging to labor, but the right to strike, and thus restrict production of essential defense materials, should not be exercised until after every reasonable effort to reach an amicable adjustment of the issue without cessation of production has been exhausted.*

"The nation looks to business and to labor to do everything within their power to avoid in the public interest stoppages in the production of munitions of war—stoppages which cannot be fully justified by the facts of the particular case. Business and labor must work together sincerely and wholeheartedly more than ever during this emergency, and in a spirit of fairness and mutual respect, if we are to bring to successful fruition the broad program of defense upon which the United States has embarked."

—Irving S. Olds,
Chairman of the Board, United States Steel Corporation.

Changing Labor Policy And the Public Utilities

Effect of the NLRB ruling as to the right of employers to discharge Communists in the defense industries including the utilities. Evidence of a more alert government policy enabling the utilities to proceed more resolutely in taking precautions necessary for their protection from sabotage by strikes or other acts.

By ANDREW BARNES

"You shall not discharge a Communist from your organization."

This, according to Chairman Howard W. Smith of the House committee which investigated the National Labor Relations Board, is the essence of NLRB rulings and policies for the past several years. In the House, sentiment is already crystallizing to repeal by statute this policy set up by administrative dicta, and the 77th Congress will have much to say and do regarding radicalism in labor unions.

This NLRB policy so irritated Dr. William M. Leiserson, until recently the minority of the board, that he dissented often and vigorously, but never more forcibly than in a case involving *The New York Times*. In this case, former Chairman J. Warren Madden and Edwin S. Smith, the majority, compelled the *Times* to reëmploy a woman, Grace Porter, who had been fired because she was suspected of Communism. Dr. Leiserson, in his dissent, brought the issue into the open, and raised the challenge by his argument that nothing in the Wagner Act could be construed as preventing an employer from firing a Communist.

The testimony of Philip G. Phillips, a regional NLRB director, according to Chairman Smith, established that the board's policy has been that Communists are as much entitled to the benefits of the Wagner Act, as though they were not pledged to the destruction of democratic government and private ownership which provides their jobs.

This policy had stirred vehement protests among members of Congress, but it remained for the Communists

to bring the issue to a showdown.

THE Vultee Aircraft Corporation in California is virtually the Army's only source of supply for trainer planes, and without these aircraft the development of a highly trained pilot force is impossible. And nothing could be more useless than 25,000 military airplanes—the national defense program's goal—without pilots to fly them when and if war comes. The Vultee plant has recently experienced a CIO strike. Before the strike was ended, the Federal Bureau of Investigation had intervened, and the report it rendered to the War and Navy departments and the National Defense Commission was anything but reassuring.

"This confidential report," said Attorney General Robert H. Jackson at the time, "describes the Communist influence which caused and which is prolonging the strike. It identifies those leaders of the strike who are either members of the Communist party or affiliated with the Communists, and the persons who are contacts between the strike committee and the leaders of the Communist party."

THE Vultee strike was the Communists' "guinea pig" test of whether the production of vital national defense weapons could be sabotaged without resort to the illegal methods of bombs, wrecked machinery, jammed gears, and the old IWW technique of disrupted transportation. The reaction was pronounced.

It is becoming increasingly apparent that the American public and the government will tolerate no sabotage of those industries devoted directly to the production of munitions and weapons. Members of Congress already are calling for legislation to declare national defense strikes to be "treason," to compel arbitration of any disputes that may stop the assembly lines of aircraft, tank, cannon, powder, and a thousand other defense factories.

What, then, can normally be expected of Communist and Nazi technique? That they are determined upon crippling America's preparations for her own defense, and the extension of aid to Great Britain, there can be no doubt. Their public statements, their pamphlets, and their confidential secrets unearthed by the FBI and the Dies committee all contain ample evidence of their intentions. But if the American public will not tolerate sabotage, and rises up against the pseudo-legal ruse of wage-and-hour strikes in defense industries, are these subversive elements thereby rendered helpless?

It would be encouraging to know that they were, but they are not. In a previous article in the PUBLIC UTILITIES FORTNIGHTLY, "Private Power and Defense,"[1] it was pointed out that defense industries are no less vital to military preparations than the power plants, gas lines, communications systems, and private utilities of all types.

IT is only natural then that these subversive groups will strike indirectly, though no less effectively, at national defense through sabotage or strikes involving plants that furnish power for national defense preparations. A bomb or a strike within a national defense plant is not their only means of disrupting an industry and paralyzing our preparations.

[1] Vol. XXVI, p. 711, November 21, 1940.

CHANGING LABOR POLICY AND THE PUBLIC UTILITIES

The fall of Belgium and France is too recent to need recounting. But, because there are lessons here for us, let us consider what happened. When their fifth columnists went into action, they did not strike at the armies. Far from it. That would have been poor technique, would have required open fighting instead of secret operations, and might therefore have failed utterly.

Instead of striking directly, a more poisonous technique was used. Spies sabotaged power plants. Communications were disrupted, and a flow of false and hopelessly conflicting messages was poured out by traitorous employees. Water supplies and fuel were cut off to intensify the sufferings of refugee populations. Vitally important telegrams were lost, withheld, or treasonably rewritten. Telephone services were interrupted. Hundreds of illicit radio stations poured out millions of words of advice to the oncoming enemy. The national paralysis was complete and ruinous.

When the United States' fifth column finds itself rooted from the industrial plants, banned from defense industries, and hunted down by the Dies committee, military intelligence, and the FBI alike—and it is now experiencing this—it will turn to insinuate itself into other vitals, and those vitals will be the public utilities, the power plants, communications, and other utilities which are the nation's nervous system.

THAT is why the government is getting the fingerprints of all telegraph and teletype operators; why it is making a close check on the private lives, even, of its own defense employees; why it is fingerprinting and photographing employees of arsenals, navy yards, aircraft factories, powder plants; why it is sending Federal agents into industrial plants to ferret out fifth columnists; why it is urging utilities to take all precautions and to be certain of the loyalty of key employees. That is why the government is urging utilities to report immediately any suspected saboteurs, to increase their guards, exercise constant vigilance in self-defense.

But, let us suppose a utilities company finds that it has one or a dozen employees who are unsympathetic to American rearmament, who would cripple the democratic system at its most critical time, who are Communists or members of a German-American bund. There is *The New York Times* ruling. There are the other rulings of the NLRB, such as the Standard Lime and Stone Company and Fansteel cases

¶ *". . . the hand that controls the power switches is equally, if not more, important to the defense effort of a nation than the hand that presses the gun trigger. In times of real emergency the nation will no more tolerate a walkout of its defense workers than the commanding officer of an army under fire would be disposed to quibble with a delegation of insubordinate infantrymen. Regardless of social equities, there are times when a concerted cessation of utility working forces could come pretty close to mutiny."*

wherein the board ordered the reinstatement of men who had committed or conspired to commit sabotage.

Until recently, the utilities have operated under a double burden. There was the necessity, under government urging, of protecting their plants in every fashion and of getting rid of suspected or potential saboteurs. But there was also the necessity of avoiding conflict with the ideologies of the NLRB, and the two jobs seemed hopelessly irreconcilable. On the sidelines was a third agency, the LaFollette Civil Liberties Committee of the Senate, armed with inquisitorial powers and committed to the same general philosophy as the NLRB, ready to subject plant owners to exhaustive investigations at the complaint of any sort of labor group.

THIS naturally brings up the question: What will be the NLRB policy in the future, and how will it affect the national defense precautions of the utilities?

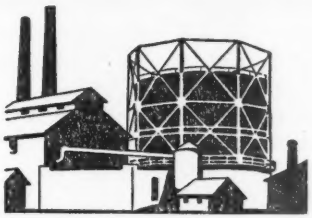
The appointment of Dr. Harry Alvin Millis, 67-year-old chairman of the department of economics at the University of Chicago, to chairmanship of the NLRB is of prime significance in determining the future policies of the board.

There is, in his appointment, reason for business men to take encouragement. Dr. Millis is primarily a labor economist, in the tradition of Dr. Isador Lubin of the Department of Labor; and a labor conciliator and mediator, in the tradition of Dr. John R. Steelman, of the same department. Labor politics and reformist theory are not a part of his record, as they were in the record of J. Warren Madden, whom he succeeded. He has had practical experience with labor, while Madden was a teacher of theory called to wrestle with the toughest practical problems in all the field of domestic government.

For four years, 1919-23, Dr. Millis served as chairman of the board of arbitration of the men's clothing industry in Chicago. He served on the special board appointed by President Roosevelt in 1938 to hear evidence in the threatened strike of a million railroad workers against a horizontal wage reduction. The opinion rendered by Dr. Millis, Dean James M. Landis of Harvard law school, and Chief Justice Walter P. Stacy of North Carolina, held that the reduction was not then justified, but the opinion was temperate, well reasoned, and strictly judicial in contrast to many NLRB rulings. In July of this year, Millis again served on the board named by the President to review the issues in a proposed strike of American Railway Express Company employees. There was no strike, in either instance.

DR. Millis was a member of the first NLRB before the current board was set up with enlarged powers in 1935 under the Wagner Act. As an economist, he has held professorates at four universities—Arkansas, Stanford, Kansas, and Chicago.

A study of his writings discloses no radical theories such as proved self-embarrassing to Madden or the third member of the labor board, Edwin S. Smith. His writings have been concise, factual, and temperate studies of labor economics. There is nothing in them to give comfort or hope to labor radicals. Dr. Leiserson, the "moder-



Sabotage of Defense Industries

"It is becoming increasingly apparent that the American public and the government will tolerate no sabotage of those industries devoted directly to the production of munitions and weapons. Members of Congress already are calling for legislation to declare national defense strikes to be 'treason,' to compel arbitration of any disputes that may stop the assembly lines of aircraft, tank, cannon, powder, and a thousand other defense factories."

ate" member of the board, significantly praised Dr. Millis' appointment as "excellent," and, no less significantly, several employees of the board who were prominently identified with the Madden-Smith philosophy resigned when they learned that Dr. Millis was appointed.

Therefore, on the basis of Millis' past record, his writings, and the varied reactions to his appointment, the conclusion may be drawn that in the future the board's policies and rulings will be based more upon sound judgment and factual analyses than upon a crusading-reformist philosophy and what Chairman Smith's committee called a willingness to "invent remedies" to cure real or theoretical evils. Even congressional friends of the NLRB admit that the Wagner Act and the cause of labor have suffered from maladministration or overzealous administration of the law.

It is a fair conclusion, then, that the nation's utilities may proceed more resolutely to take those precautions required for their protection.

These precautions should be based upon reasonable evidence and reasonable grounds. In such a case, they may be comfortably sure that they will receive fair treatment from the government and its agencies, including the NLRB. If Mr. A., manager of a power plant, feels that his employees are in some cases subject to suspicion, he should not wait for his worst fears to be confirmed by overt action. That will be too late. He should inform the Federal Bureau of Investigation of his fears, and invite this agency to send men into his plant. It will coöperate; and if Mr. A's fears are confirmed by the investigation, he can act with the assurance that the findings of a government agency support him. The FBI has the job of helping protect

vital industries; it has approximately $10,000,000 which Congress voted expressly for this work.

At the same time, there is a well-directed campaign developing in Congress for specific legislation to root left-wing radicals out of labor unions and defense industries. The public utilities—of all types—should not fail to call to the attention of Congress the fact that sabotage of national defense and paralysis of the national effort are not accomplished in munitions factories alone, but can be carried out with equal facility by striking through the power plants, communications, transportation, and other utilities.

FINALLY, if the reorganized National Labor Relations Board does not bear out the foregoing forecast that its position in the future will be more moderate and temperate than in the past, there are growing indications that Congress will not delay in seeking a bold short-cut. Already suggestions have been made that defense industries (which would almost certainly include the vital public services) should be removed from the jurisdiction of the NLRB, and that their labor relations problems ought to be placed under the control of some special board, headed up under the National Defense Advisory Commission.

An alternative suggestion is contained in a bill introduced by Chairman Carl Vinson of the House Naval Affairs Committee modeled on the Railroad Mediation Act. This would require a 90-day "waiting period" between any strike vote and the actual stoppage of work in industries connected with national defense. The House Judiciary Committee is also studying the possibility of using the national conscription act as a vehicle for discouraging unwarranted strikes.

In other words, the hand that controls the power switches is equally, if not more, important to the defense effort of a nation than the hand that presses the gun trigger. In times of real emergency the nation will no more tolerate a walkout of its defense workers than the commanding officer of an army under fire would be disposed to quibble with a delegation of insubordinate infantrymen. Regardless of social equities, there are times when a concerted cessation of utility working forces could come close to mutiny.

OBVIOUSLY, of course, safeguards would have to be installed in any substitute organization to prevent defense workers from being exploited by their employers under cover of defense emergency. The important thing would be that the service must go on and that disputes must be mediated without interruption of such service. Chairman Millis has indicated his sensitiveness to these harsh truths. The NLRB, within its own statutory powers, will probably try to act accordingly. If not, and if defense labor trouble continues, we can expect sharp congressional sniping along the labor regulatory front in the near future.

The spy, the saboteur, the enemy of democracy and capitalist economy and individual initiative, is not sleeping in these hours. The government knows this. The President and the Congress know it. No plant manager or utilities president can afford to ignore it. And the government will applaud every reasonable precaution and vigilant protection he may decree.

Wire and Wireless Communication

TELEPHONE companies, especially those of the Bell system, may have been slightly surprised to find themselves mentioned at the recent hearings before the SEC on the proposal to require open and competitive bidding on the underwriting of security issues. The SEC's proposed rule would, of course, affect only companies subject to the Public Utility Holding Company Act of 1935. And telephone companies are not "utilities" within the meaning of that statute.

However, the recent large private sale of AT&T bonds to a closed syndicate of insurance companies and the traditional closed deals for handling Bell securities, exemplified by the recent $50,000,000 offering of the Illinois Bell, climaxed considerable dissatisfaction on the part of certain investment dealers.

One of such dealers was the firm of Otis & Co. of Cleveland, Ohio, long an advocate of open and competitive bidding. In its brief before the SEC, filed January 23rd, Otis & Co. referred to the view of the SEC on this subject in the following paragraph:

> The FCC's views on telephone financing were voiced as follows in the 1939 report . . . : "It would seem fair that, if the cost of bond money is to be a factor in determining interest during construction work in progress, and evidence in establishing a fair rate of return, the investment bankers should be given an opportunity to make competitive bids, and the investment market should be allowed to express itself freely as to the rates of return at which it will supply the telephone business with capital." The summary which the FCC released with the report stated that the study of the securities sales made indicated that the company "could have taken care of its needs for financing since 1906 at a lesser cost if securities had been opened to competitive bids" rather than having been disposed of exclusively through the same banking house or its successor.

REGARDING overpricing of utilities securities — a development which critics of open bidding profess to fear, the Otis brief stated:

> Overpricing of issues has not characterized the two main fields of finance—municipals and railroad equipment trusts—where competitive bidding has been compulsory for some length of time. Nor is private negotiation any guaranty against overpricing, as the unduly high price of the $25,000,000 Southern Bell Telephone & Telegraph Company bonds issued in 1939 and of the $45,000,000 Illinois Bell Telephone Company bonds issued in 1941, will testify, although underpricing is more usual than overpricing in private negotiation. Competitive bidding naturally cannot insure the infallibility of banker judgment, but it can and will make available the judgment of many disinterested banking groups.

On the subject of private placements, which is the biggest bugaboo of the investment dealers, the Otis brief again referred to recent Bell financing operations:

> The problem which private placements impose on underwriters would be immediately solved by competitive bidding. Private placement has been defended as the best way for an issuer to avoid high underwriting costs. Yet the American Telephone and Telegraph Company was only able to obtain its money at a 2.80 per cent interest cost in recently placing a $140,000,000 debenture issue directly with insurance companies, while, at about the same time, the Boston Edison Company obtained its money at the

more favorable interest cost of 2.58 per cent in selling a $53,000,000 bond issue at competitive bidding. The difference in these interest costs was obviously much greater than the slight difference in grade of the two securities could possibly have warranted. Furthermore, under private placement the issuing company gives up the good will arising from the wide distribution of its securities, submits—or will submit on occasion—to the dictation of a few large insurance companies, and will never be able to make any retirements of its bonds, whether for sinking-fund requirements or any other purpose, except at prevailing call prices.

There is little likelihood that such references before the SEC to the financing operations of a group of utility companies beyond its jurisdiction (except, of course, the general registration provision of the Securities Act of 1933) would stir any agitation for extending the SEC's jurisdiction in the direction of telephone companies. The FCC has already staked out its claim to such jurisdiction, if, as, and when. For that matter, in view of the fact that major Bell financial operations have been largely completed for the time being, observers felt that the open bidding issue would die down after the SEC disposes of its proposed ruling affecting companies under the Holding Company Act.

* * * *

THE charge of censorship against the FCC reared its head as the result of the recent reprimand delivered to Station WAAB of Boston "for past practices," in alleged overzealous advocation of various controversial causes by the broadcasting management. The commission renewed the station's license on its pledge not "to color or editorialize the news received" in the future. From early in 1937 through September, 1938, the commission said, it was the policy of WAAB "to broadcast so-called editorials from time to time urging the election of various candidates for political office or supporting one side or another in various questions in public controversy." The commission continued:

> Radio can serve as an instrument of democracy only when devoted to the communication of information and the exchange of ideas fairly and objectively presented.
>
> A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, the broadcaster cannot be an advocate.

THE nationally syndicated political commentator, David Lawrence, raised the question of who is to decide what is "fair" and what is "objective" and what is "partisan" in the reporting of news over the air waves. Mr. Lawrence suggested that a "board consisting of political appointees" might have its own partisan conception of news. He added:

> Unfortunately the commission did not permit a case to be decided in a way that would permit court review. The license was actually not taken away, but renewal was accompanied by a bold confession of intimidation. The commission extorted from the broadcasting station a formal promise to be good according to the concepts of the commission and after exacting such a written pledge the station was allowed to retain its license.

Mr. Lawrence went on to argue that the remedy does not lie in court revision but in a complete reorganization of the FCC, so that the term of each member should not be longer than one year. In this way, he said, the Senate could decide whether to confirm commissioners who are violating the spirit or letter of the statutory injunction against the exercise of censorship powers by the FCC. He questioned, also, whether the press of the nation might not eventually be in line for bureaucratic suppression or intimidation if systematic though indirect censorship became commonplace with respect to radio broadcasting.

* * * *

NO complaints by the public concerning the practice of reforwarding telegrams in interstate commerce having been received, and no abuses in the practice having come to its attention, the Federal Communications Commission last month discontinued its investigation into such service but warned that if abuse is later found or complaints made it will take appropriate action.

In its report (No. T-10), the commis-

sion pointed out that a 10-word *prepaid* telegram could be sent from New York city to a person temporarily in Baltimore at a charge of 36 cents. If the party had gone to San Francisco and left a forwarding address, the message could be reforwarded across the continent without additional charge; whereas the charge for a 10-word telegram sent directly from New York to San Francisco would be $1.20. Conversely, however, a 10-word *prepaid* telegram sent from New York to San Francisco and reforwarded to Baltimore would be charged for at the New York-San Francisco rate of $1.20, rather than at the lower rate between New York and Baltimore.

The rule as to *collect* messages differs in that the rate charged for a reforwarded *collect* message is the rate between the point of origin and the point at which delivery is actually made. For example, if a message were sent *collect* from New York to San Francisco and reforwarded to Boston, the charge collected would be the rate from New York to Boston only. Conversely, a *collect* message sent from New York to Boston and reforwarded to San Francisco would be charged for on the basis of the toll from New York to San Francisco.

Commissioners Walker and Thompson dissented.

* * * *

THE Federal Communications Commission on January 15th announced the appointment of Robert G. Seaks of Harrisburg, Pennsylvania, as assistant to the chairman, James Lawrence Fly. From 1934 until the present time, Mr. Seaks was a member of the legal staff of the Tennessee Valley Authority, except for a period in 1936 and 1937 when he did graduate work at Yale Law School.

Mr. Seaks was graduated from Gettysburg College in 1931, later being elected to Phi Beta Kappa. Three years later he was first man in the graduating class at Duke Law School.

Mr. Seaks assumed his new duties on January 15th, filling the vacancy caused by the appointment of Nathan H. David to the commission's legal staff.

COMPLETING a year of record demand for its services, the American Telephone and Telegraph Company recently reported for 1940 a more than 10 per cent margin over its annual $9 dividend requirement, with earnings of $10.07 a share on its capital stock. This earnings experience of the parent of the Bell system last year was reported to stockholders by Walter S. Gifford, president, together with Bell system results for the twelve months ended November 30th, which gave consolidated system earnings at $10.93 a share.

With new income last year of more than $188,000,000, the parent topped the previous record net of $179,834,815 in 1937.

The Bell system, according to Mr. Gifford, added more telephones to its lines last year than in any year in its history with a total increase of about 950,000, compared with an increase of 775,000 in 1939. Toll and long-distance calls in 1940 were about 8 per cent greater than in 1939.

The report of the Bell system (American Telephone and Telegraph Company and its principal telephone subsidiaries) for three months ended November 30, 1940, showed consolidated net income applicable to the stock of American Telephone and Telegraph Company of $55,683,014 after depreciation, interest, Federal income taxes, minority interest, etc., equal to $2.98 a share on 18,686,794 shares of capital stock. This compared with $55,522,349 or $2.97 a share in three months ended November 30, 1939.

* * * *

IN a move that will assure additional coast-to-coast communication facilities to meet future defense needs, the Bell telephone system recently began construction of a 1,600-mile underground cable line costing nearly $20,000,000, from Omaha, Nebraska, to Sacramento, California. At those points the new line will link with cable networks of the East and Far West to provide the first all-cable transcontinental telephone line. Announcement of the start of work was made on January 21st

by the Long Lines Department of the American Telephone and Telegraph Company.

For protection, the new line will be buried underground along a carefully selected right of way which avoids highways. Supplementing several existing "open wire" aerial transcontinental telephone lines, it will increase transcontinental circuits initially by about 50 per cent and will ultimately almost triple present cross-continent facilities. The planned increase is expected to meet practically any demands for telephone communication between the vital centers of industry, railheads, and troop concentration points on either coast.

Construction permits have been issued for the Omaha-Denver section and applications for the remainder were to be submitted to the Federal Communications Commission in the near future.

The line will consist of two cables buried for almost their entire length by a special tractor-hauled "plow train." This plows a deep furrow, lays the two cables in it, and covers them with earth —all in one continuous operation. Long lines construction gangs now moving westward from Omaha and Grand Island, Nebraska, expect to reach Laramie, Wyoming, by the end of the year. Gangs of the Pacific Telephone & Telegraph Company will start eastward from Sacramento. The route touches Denver and passes through Cheyenne and Salt Lake City.

The cables will employ equipment whereby 12 talking channels can be set up for each two pairs of wires. One cable contains the wires for West-bound channels, the other for East-bound. To amplify the circuits, nearly 100 amplifier stations will be needed along the 1,600-mile route; 6 of these are already under construction between Omaha and Grand Island.

* * * *

THE report of the Western Union Telegraph Company for the first eleven months of 1940, made public last month by Roy B. White, president, showed a net income of $2,850,587 after all expenses and charges. The net was equal to $2.72 each on the 1,045,592 shares of capital stock outstanding and compared with a net of $828,768, or 79 cents a share, earned in the first eleven months of 1939.

Western Union's gross revenues in the period aggregated $90,073,338, against $86,726,114 the year before, a gain of 3.9 per cent.

Mr. White said the upward trend of domestic telegraph business was continuing as a result of increased business activity in this country and the growing effects of the national defense program. He pointed out, however, that cable revenues were lower than a year ago.

Mr. White added that the company's net income for December would exceed that of the same month in 1939 and that earnings for the full year 1940 would be in excess of the net income of $3,325,000 in 1937 and the largest since 1936, despite higher depreciation charges and additional costs imposed by legislation.

* * * *

THE United States Supreme Court on January 13th refused for a second time to review a decision upholding a Minnesota Railroad and Warehouse Commission order which directed the Tri-State Telephone & Telegraph Company to reduce by 12½ per cent—instead of 25 per cent—its charges for telephone service in the St. Paul metropolitan area.

The review was first denied on December 16th. The court denied a recent petition for rehearing filed by Harry W. Oehler, corporation counsel of St. Paul.

A 25 per cent reduction was directed in 1936 by the Minnesota commission. A 1939 order provided for a slash of only 12½ per cent, and it was upheld by the Minnesota Supreme Court.

* * * *

THE Pennsylvania commission recently announced acceptance by the Pennsylvania Bell Telephone Company of a rate cut of $1,400,000 a year, effective March 1st. The reduction will wind up a commission investigation which began in 1937.

Financial News and Comment

By OWEN ELY

SEC Tightens Integration Requirements

SINCE the November elections, the SEC has gradually "tightened up" its policies, as indicated by the following:

(1) It has questioned the right of Commonwealth & Southern to dispose of certain bond holdings in a subsidiary, on the ground that such bonds automatically rank below similar bonds held by the public.

(2) The device of trusteeing utility holdings to avoid registration as a holding company, tried by Cities Service and International Paper, has been rejected; Cities Service nonutility subsidiaries are apparently to be subject to some degree of SEC regulation; while the trustees acting for International Paper have been ordered to surrender the common and Class B stock of International Hydro-Electric for cancellation, on the ground that they are worthless.

(3) The commission is considering the inauguration of a system of competitive bidding for all security issues of the utility industry, despite opposition by the investment banking fraternity.

(4) Columbia Gas' voluntary integration plan has been rejected and the principle set forth that electric systems and natural gas systems must be considered as distinct under § 11, with the implication that they may have to be separated completely.

(5) SEC views regarding the geographical phase of § 11 have been finally revealed—in the official plan for UGI (see page 240)—to be almost the narrowest reasonable interpretation conceivable. Chairman Frank also holds that prompt reshuffling and regrouping of utility holding systems is highly important from a national defense standpoint. Mr. Frank stated:

> Efficient operation of an operating company requires an intimate and constantly up-to-date knowledge of the property and the changing problems of the community in which it operates. A holding company having dozens of scattered properties in as many widely separated parts of the country cannot know these management problems as intimately as a holding company whose interest is confined to a single, compact, geographic (not to say industrial) area.

Mr. Frank indicated that official plans for Engineers Public Service, United Light & Power, and Commonwealth & Southern would be issued shortly. United Light & Power has already made certain alternative suggestions to the commission for the elimination of (1) United Light & Power, top company or (2) United Light & Railways, subholding company, or (3) Continental Gas & Electric and American Light & Traction, intermediate holding companies.

IN the UGI integration "blue print," the holding company is required to confine its operating properties to the states bordering a chosen central state containing the "primary system." On this basis the system would include the properties located in southeastern Pennsylvania and the adjoining portions of Maryland and Delaware. Accordingly, UGI must give up the properties located in Connecticut, New Hampshire, Arizona, Tennessee, and Kansas. Erie County Electric and Luzerne County Gas & Electric would also have to be divorced under the other clauses of the A-B-C rules, and a number of gas prop-

erties would have to be given up. UGI's huge investment in Public Service Corporation of New Jersey, together with its interest in Hartford Gas, would apparently have to be relinquished.

Summarizing, UGI would be permitted to retain properties with a book value of about $350,000,000 (plus some non-utility properties) while about $275,000,000 worth of system holdings would have to be disposed of, together with other investments with a book value of about $123,600,000. In other words, the system would be practically cut in half.

It is probable that the SEC has, for bargaining purposes, made its first integration plan about as "tough" as possible. Certainly such a narrow interpretation of the A-B-C rules will work havoc with the set-up of the average holding company, and if enforced must result in widespread liquidation of investments in operating companies. How such a program can be considered beneficial or necessary under war-time conditions, when high taxes and operating costs are depressing the value of utility equities, is difficult to imagine. The many resulting changes in control would necessarily be a highly disturbing factor to utility management everywhere, preventing concentration on engineering, construction, and operating problems at a critical time.

As to the argument advanced by Chairman Frank, is there any concrete evidence that the systems operated by the large holding companies are less efficient than they would be if broken up into small local groups?

Of course, it must be kept in mind that the act requires that the larger or multiple systems be more efficient in order to warrant continued existence. Washington, in some respects, is trying to regulate the entire utility industry. The state commissions are not consulted on this matter. Chairman Frank apparently gives little weight to the fact that some large holding companies leave local management problems to local operating company officials, merely formulating broad policies for their guidance and furnishing centralized accounting, engineering, legal, and financial services. The efficiency of the latter services must not be confused with the problem of local operating emergencies and problems. In the case of Electric Bond and Share, while the subholding companies' properties are geographically scattered, operating supervision by Ebasco is organized on a geographical basis.

The SEC plan for UGI represents only its "tentative findings," and the company's views were to be heard at the hearings beginning February 6th. At least the SEC has clarified the integration picture, after considerable delay, and the utility holding companies must now decide whether to carry the issue to the courts, appeal to Congress for a modification of the act, or coöperate with the SEC in a broad program of "unscrambling the eggs"—to use the classic phrase of J. P. Morgan the elder.

Five-year Analysis of Utility Financing

UTILITY financing in the year 1940 dropped a little below the previous year, but slightly exceeded 1938. Following are the totals for recent years as compiled by the *Commercial & Financial Chronicle* (in millions of dollars):

	Utilities	*Other Corporations*
1940	$1,264	$1,457
1939	1,327	869
1938	1,223	918
1937	828	1,605
1936	2,125	2,507

While utility financing thus compares favorably in amount with other corporate financing, this is owing to the favorable conditions for large refunding operations rather than the raising of new capital. The percentage of new capital financing to total security issues has been considerably lower for the utilities than for other corporations though the proportion of stock financing, since 1937, has been about the same, as indicated in the accompanying table.

	Percentage of Total New Issues			
	% "New Capital" Financing		% Stock Financing	
	Utilities	*Others*	*Utilities*	*Others*
1940	21%	31%	12%	12%
1939	5	37	10	11
1938	22	66	2	8
1937	18	67	11	42
1936	6	44	2	21

Private utility financing in 1940 is estimated at $404,000,000 or about 32 per cent of total security issues. Other corporations, however, had only $388,000,000 privately placed offerings, less than 27 per cent of the total. For all corporate borrowers, private financing amounted to 29 per cent compared with 33 per cent in 1939, 32 per cent in 1938, and 19 per cent in 1937 (prior to which year the percentage was probably much lower).

Stock issues offered to the public in 1940 by utility corporations were the largest in ten years, aggregating $164,440,000 for 25 issues, compared with $105,437,000 for 15 issues in 1939, and $194,102,500 in 1930.

Commonwealth Edison

COMMONWEALTH Edison is the second largest of the metropolitan operating companies, its 1939 assets (in millions) comparing with some other leading systems as follows:

Consol. Edison of N. Y.	$1,353
Commonwealth Edison	841
Public Service of N. J.	699
Philadelphia Electric	440
Detroit Edison	364
Boston Edison	188
Consol. Gas of Baltimore	179

Commonwealth and its subsidiaries (including Public Service Company of Northern Illinois and Western United Gas & Electric Company) supply the entire electric requirements of Chicago, and furnish electricity, gas, and miscellaneous services in adjacent suburban areas and other parts of Illinois. The total population served is over five million.

Of total sales, electricity accounts for about 89 per cent, gas 10 per cent, and miscellaneous about 1 per cent. The electric business is well diversified, about one-third of the revenues being obtained from residential and rural customers, one-half from commercial and industrial users, and the balance from electric railroads and miscellaneous consumers.

System capitalization, which has been simplified by exchange offers and refunding operations in recent years, is approximately as follows:

Subsidiary funded debt, etc. (including minority interest)	$80,665,000
Convertible debenture 3½s of 1958	30,000,800*
First 3½s of 1979	114,500,000
First 3½s of 1968	100,000,000
Common stock ($25 par) (shares), estimated	12,564,800*

*As of October 13, 1940; some additional bonds may have been converted into stock since that date.

The earnings record and price record on the common stock (adjusted for the 1937 split-up) are shown in the table at top of p. 226.

IF all the remaining debenture 3½s are converted into common stock at the rate of 40 shares per $1,000 bond, this would increase the common stock to approximately 13,764,832 shares. Since the dividend rate on the newly created stock is over twice the interest requirements on the bonds, the net result would be to cut down the share earnings somewhat, although, of course, the capital structure would be improved. While exact figures are not obtainable, the 1939 share earnings would, it is estimated, be reduced from $2.43 to about $2.12 if all the bonds had been converted at the beginning of the year.

After completion of the conversion, Commonwealth's funded debt would amount to about $295,000,000, and

	Earned per Share		Approximate Range	
	Parent Co.	Consol. System	High	Low
1940 (estimated)	...	$2.25	33	26
1939	$2.36	2.43	32	26
1938	2.17	2.40	28	22
1937	2.17	2.48	35	21
1936	1.70	1.90	30	24
1935	1.60	...	25	12
1934	1.30	...	16	9
1933	1.14	...	21	8
1932	1.62	...	31	12
1931	2.82	...	64	27
1930	3.29	...	85	55
1929	3.46	...	112	51

capital stock and surplus to approximately $379,000,000; the resulting ratios of 44 per cent funded debt and 56 per cent common stock would compare with Consolidated Edison's funded debt of 40 per cent, preferred stock 16 per cent, and common stock around 44 per cent.

The convertible debentures are currently selling around 116 and, as they are callable at 103⅛, it is obvious that the company can easily force conversion of the balance at any time it desires, by announcing the call. However, since it might be necessary to underwrite a redemption, the logical time to effect this would be when the 1st 3½s are called.

Commonwealth's ratios of depreciation, maintenance, taxes, and fixed charges to gross revenues in the years 1929-40 are shown below.

The figures below may not be strictly comparable with those of other systems because Commonwealth purchases a considerable amount of power. If the parent company's 1939 income account should be adjusted to eliminate purchased power from both revenues and expenses, the revised ratios would compare with those of Consolidated Edison as shown in the table on the next page.

While the company's combined charges for depreciation and maintenance are not especially high as contrasted with other large companies, they have been maintained at a good level for some years with the result that the balance sheet reserve amounts to about 18.4 per cent of gross plant, as contrasted with Consolidated Edison's 6.3 per cent.

Potential savings for stockholders from future refunding operations do not bulk very large—only about 5-10 cents a share. The $100,000,000 1st 3½s of 1968 are currently around 108 and during the past year have sold as high as 111⅜. They are callable at 106 and, if bond market conditions remain favorable, could per-

Year	*Depreciation*	*Maintenance*	*Total*	*Taxes*	*Fixed Charges*
1940* (System)	11.4%	5.2%	16.6%	19.8%	8.2%
1939 (System)	11.4	5.7	17.1	18.0	10.8
(Parent Co.)	10.4	5.2	15.6	19.6	11.8
1938 (Parent Co.)	10.7	5.0	15.7	18.4	11.3
1937 (Parent Co.)	10.3	4.5	14.8	18.2	10.3
1936 (Parent Co.)	10.0	4.1	14.1	18.4	11.1
1935 (Parent Co.)	10.1	4.8	14.9	15.3	12.0
1934 (Parent Co.)	10.6	4.5	15.1	15.2	12.8
1933 (Parent Co.)	11.0	4.7	15.7	14.2	13.4
1932 (Parent Co.)	10.4	4.0	14.4	13.2	13.0
1931 (Parent Co.)	7.7	4.9	12.6	10.8	11.8
1930 (Parent Co.)	8.4	5.8	14.2	11.0	10.1
1929 (Parent Co.)	9.8	7.1	16.9	10.3	9.7

* For twelve months ended September 30, 1940.

	Actual	*Adjusted*	*Consolidated Edison of NY**
Depreciation	10.4	11.4	9.6
Maintenance	5.2	5.8	6.8
Total	15.6	17.2	16.4
Taxes	19.6	21.7	21.6
Fixed charges	11.8	13.2	7.4

*Parent company.

haps be refunded to effect a net interest saving of about one-half per cent or $500,000 per annum. The $114,500,000 1st 3¼s, which were placed with 14 insurance companies, are unlikely to be redeemed. The $80,000,000 Public Service of Northern Illinois 1st 3½s of 1968, currently around 109, might be called (they are redeemable at 106¾) for a net saving of about $400,000.

While Commonwealth Edison does not offer so attractive a yield as Consolidated Edison, Public Service of New Jersey, and some other medium-priced utility issues, it has maintained a surprisingly strong market position in recent months despite the gradually increasing amount of stock due to bond conversions. There has been some indication that investors have recently favored the issue in preference to others, presumably in recognition of the relatively low average residential rate (about 4 cents), the conservative financial structure, the ample depreciation reserve in relation to gross plant, and other favorable factors.

Competitive Bidding

THE National Association of Securities Dealers, Inc., has questioned the legal powers of the SEC to require competitive bidding for utility security offerings, submitting a special opinion prepared by Baker, Hostetler & Patterson. The NASD also opposed competitive bidding for the following reasons:

1. Overpricing, as a result of using competitive instead of negotiated bids, would benefit only the utility and work against the investing public.

2. Compulsory competitive bidding would lead in practice toward complete government control of the private capital market.

3. Smaller securities dealers would be penalized in favor of large buyers.

Regarding the indicated SEC view that it should aid the utilities to obtain the best possible price for their issues, the association held that this view is "in contravention of the express terms of the Public Utility Act which gives the commission a duty to protect investors, and in fact against the position which the commission has taken" in passing on the Consumers Power Company bonds, West Penn Power Company stock, the Newport Electric Corporation stock, and many other issues.

The Investment Bankers Association has also taken a vigorous stand against competitive bidding, and has filed a brief with the SEC holding that such a system would adversely affect the utilities. (See page 234.)

The IBA held that underwriting procedure would be cheapened, since an underwriter spending the least for investigation and for distribution could afford to pay the highest price for an issue. Moreover, compulsory bidding would not relieve the SEC of any responsibilities; it would still have to examine the "reasonableness" of price and spread.

THE IBA brief contended that competitive bidding would work unfavorably for hundreds of small dealers. It was said:

> If, under compulsory competitive bidding, the small dealers throughout the country are no longer included in selling groups, it must not be forgotten that the thousands of small investors, the clients of these dealers, will not have the opportunity to buy the high

quality investments formerly flowing to them through these channels. Investors in the interior, small insurance companies, country banks, endowment funds of small colleges, fraternal organizations, will have a very limited opportunity to obtain high quality bonds through their local dealers and will be compelled to content themselves with second- and third-grade investments. . . . Competitive bidding . . . would tend to bring about elimination . . . of the 1,000 or so dealers who now gain an important portion of their annual income from participating in the selling groups formed to distribute such issues. Also, a number of the smaller underwriters might find survival difficult because they could not bid directly, by reason of their limited capital.

The IBA contention was supported by the testimony of several small investment dealers from Cleveland and Columbus, Ohio. One dealer asserted that competitive bidding would lead to "a return to the chain store system of securities distribution of the 1920's, with a few large New York houses having 57 varieties of offices scattered all over the country."

Harold Stanley of Morgan, Stanley & Co. cited his firm's market experience with 74 issues aggregating $2,684,000,000: The average offering price for these issues was 100.52; the average bid price on the first day was 100.82; in the second week 100.89; in the third week 100.87; and in the fourth week 100.86.

Vice President Fiske of the Montclair Trust Company pointed out, as instances of gross overpricing resulting from competitive bidding, Southern Bell Telephone, Terminal Association of St. Louis, Chesapeake & Ohio, and Boston Edison. Mr. Fiske's views were criticized, however, by Cyrus Eaton of Otis & Co. This Cleveland company and Halsey, Stuart & Co. of Chicago are the only firms which have consistently favored competitive bidding.

Vice President Ecker of the Metropolitan Life Insurance Company opposed competitive bidding as likely to lead to some of the evils of high-pressure salesmanship; in any event he thought that private placements should be exempted. He stated that, if required to do so, his company would probably bid competitively.

January Security Offerings

DESPITE occasional difficulties with the SEC regarding new security registrations, utility offerings (public and private) have maintained a high level in recent months—October exceeding $200,000,000, November $150,000,000, and December $200,000,000. January, normally a "quiet" month, was expected at this writing to run somewhat below this level.

January public offerings (to the 30th) were as follows:

$ 7,500,000	Montana-Dakota Utilities 1st 3¼s of 1961 @ 103½
50,000,000	Illinois Bell Tel. 1st 2¾s of 1981 @ 103¾
12,000,000	Consolidated Gas of Balt. ref. 2¾s of 1976 @ 103¾
1,400,000	Savannah Gas 1st 3¼s of 1966 and serial notes
11,500,000	Southern Counties Gas of Cal. 1st 3s of 1971@ 101
7,500,000	Luzerne County G. & E. 1st 3¼s of 1966 @ 104⅜
484,379 sh.	Southern Natural Gas common stock @ $10 (for subscription by stockholders, including Federal Water Service, which agreed to take more than half the offering)
12,000,000	Panhandle Eastern Pipe Line 1st 3s of 1960 @ 102

Wisconsin Public Service (Standard Gas and Electric system) has filed $26,500,000 1st 3¼s due 1971, together with 132,000 shares of 5 per cent preferred and 200,000 shares of common stock, part of the preferred and all of the common being sold to the parent company. The bond offering is expected shortly.

Lake Superior District Power Company has registered 35,000 shares of 5 per cent preferred, which will be offered to present preferred stockholders before being offered by a syndicate.

ERRATUM: In the table on page 101 of the FORTNIGHTLY for January 16th, the 1939 average residential revenue per kilowatt hour for Pacific Gas and Electric Company was given as 5.0 cents. The figure should have been 3.3 cents, the lowest for the companies tabulated.

What Others Think

The State Governors and The Utilities

CONTRASTED with the peak of controversy over the so-called "utility issue" (which was probably reached with the enactment of the Holding Company Act by the Federal Congress in 1935), there has been observed a gradual diminution of activity in legislation directly affecting utilities. This can be explained to some degree by the fact that constant reduction of utility rates has lessened political agitation. Again, actual enactment of many measures affecting utility regulation has brought an end to such agitation through the medium of accomplished reform. Of course, the continued Federal policy of public power projects and the encouragement of local public distribution of such power will probably keep alive for several years to come legislative programs in various states concerning the establishment and organization of public power agencies.

By and large, however, the legislative biennial of 1941 appears likely to produce fewer state laws directly affecting public utilities and their regulation than any other legislative year in the preceding decades. At any rate, such a result would seem to be indicated by the small attention given to the utilities in the numerous messages to the state legislatures and in inaugural addresses by the various state governors during the month of January, 1941.

No substantial mention is made of public utilities in the messages of the governors of the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri (Governor Stark holding over pending election contest over Governor Donnell), Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, and Texas.

The public ownership question received a certain amount of attention as Federal power projects begin to come into operation. In Arizona, for example, Governor Osborn asked for the establishment of a 3-man Arizona Power Authority for the purpose of encouraging and promoting the practical use of water and hydroelectric and water power. The principal duties of the authority would be to coöperate in the making or causing surveys to be made along the Colorado river and its tributaries, to improve water systems or inaugurate new irrigation systems, to create and distribute electric energy, to transmit electric energy, or enter into reciprocal or pooling agreements in coöperation with private interests or with the Federal government or other public power agencies. Governor Osborn's bill would not, however, recognize the so-called "Colorado river compact" adopted by Arizona's neighboring states.

In California, Governor Olson urged that the legislature either enact a law permitting the public development of electric distribution systems for the Central Valley project or acquiesce in his recommendation that the Federal government come in and set up such a distribution system similar to the TVA activities.

In Indiana, Governor Schricker, in the course of his address to the assembly, stated:

> In considering the problems of our cities and towns, I would recommend sympathetic consideration of such acts as will encourage public ownership of utility service, and also direct your attention to the imperative need of recodifying the city and town laws of our state. A study committee should be appointed for this latter purpose with the thought of submitting a full report to the next general assembly.

In Oregon, Governor Sprague, after commending the diligent conduct of the Oregon Public Utilities Commissioner in obtaining utility rate reductions amounting to $1,517,000 in 1940 alone, stated:

> Six new districts were established under the people's utility district law during the biennium and 9 proposed districts were voted down. To date 11 districts have been created and 2 have voted bonds to finance acquisition or construction of an electric distribution system. Undoubtedly the availability of energy from the Federal power project at Bonneville has stimulated interest in public ownership. Private companies serving the territory have been aggressive in rate reductions and line extensions in an effort to preserve their field for private operation.
>
> Observing the financing of public utility districts in Washington, I am convinced of the soundness of the Oregon requirement that bonds be sold only at public sale. I do, however, recommend an amendment which would permit sale by negotiation of utility district bonds to the Federal government or a wholly owned agency of the government. This would be necessary in case a group or district took over an entire system with financing provided by the Reconstruction Finance Corporation.
>
> The Bonneville Administration, on my request, reviewed our people's utility district law and made suggestions of changes which, with my comments, will be referred to appropriate committees of your body. While certain amendments would smooth out the operation of the act, I do not propose its rewriting. Districts are being formed under the act, and its main structure has been tested in the courts and approved.

Governor Maybank of South Carolina reported progress on the Santee-Cooper project which, he said, was already half finished and regretted that, because of defense conditions, similar projects at Lyles Ford and Clarks Hill have not been undertaken by the Federal government. He also regretted that, because of the delay resulting from litigation over Santee-Cooper activities, a number of defense industries that might otherwise have been induced by cheap power supply to locate in South Carolina were unable to do so. He promised further coöperation with the Federal government and urged further encouragement of the development of the state's water power resources.

Governor Cooper of Tennessee proudly pointed to progress of TVA in his inaugural address and observed that "Tennessee is known throughout the entire nation as the 'public power state.'"

Governor Maw of Utah, expressing dissatisfaction with electric rates in that state, urged public power development as a possible solution. He stated in the course of his message to the legislature:

> For some reason, possibly our own fault, our natural sites for power plants have not experienced Federal development. The cost of power to a manufacturer is such an important item that Utah industry cannot hope to be developed on a large scale so long as our citizens must pay rates that are materially higher than rates in adjacent territories. It will, therefore, be necessary to do everything possible, as part of our development program, to obtain cheap electric power for our state. Federal projects account for the cheap power in the states surrounding us. It, therefore, becomes our duty to direct our unified efforts toward inducing the Federal government to consider and undertake projects to accomplish this end, so that Utah can receive the benefits to which it is rightfully entitled. The facilities of our local utilities could be well utilized in the distribution of such power.
>
> A comprehensive Utah program for the development of the Colorado river system for the purpose of benefiting Utah industry and agriculture is of paramount importance, and such a program should be developed and placed in the hands of Utah's congressional delegation in Washington without delay.

In Washington, Governor Langlie implied that the irrigation features of the Columbia river valley basin development, as distinguished from the hydroelectric power features already vigorously promoted by the Federal government, should now be given prompt consideration. He stated in the course of his inaugural address:

> Grand Coulee dam is now about completed, and electrical power is expected to be generated during the present year. It is of utmost importance to this state and to the Pacific Northwest and, indeed, to the entire nation, that the irrigation features of the Columbia basin project now proceed without delay or interruption.
>
> The development and settlement of the lands to be irrigated present problems of

vital concern to the state of Washington —economic, social, and political problems of great complexity and wide ramifications. We must coöperate with the landowners of the area, and with the Federal government which has made the project possible, in solving these problems in a manner which will, with fair treatment of present property owners, assure the prosperity of the farmers and the financial stability of the irrigation districts.

I solicit your most earnest coöperation in the study of these problems and in the enactment of any legislation which may prove to be necessary or desirable in this connection. The kind of machinery now to be set up for developing and settling the Columbia basin project will affect, most fundamentally, the future well-being of eastern Washington and of the entire state.

ON the subject of utility regulation the utterances of the state governors were few indeed compared with bygone years. Only in New York, Connecticut, and Rhode Island were substantial programs in the field of public utility regulation suggested. The most important of these was the text of Governor Lehman's message to the New York legislature. This must be considered in the light of similar previous recommendations of Governor Lehman, upon which the New York legislature has so far failed to act. After expressing the hope for favorable congressional action on the St. Lawrence power project, Governor Lehman stated:

> I recommend that submetering companies, namely, companies which buy electricity from a public utility and sell it to their tenants, should be brought under regulation. At present no authority, state or municipal, has the power to supervise and regulate the charges made by such companies. Tenants are compelled to accept their service and pay what they charge or do without electricity. Tenants cannot obtain service directly from the utility companies because the landlord controls the wires between their apartment or premises and the distributing system of the utility.
>
> These submetering companies also impose such conditions as they see fit regarding service. They require any deposit they care to impose and there have been many instances where the consumer has received no interest on his deposit and has not been able to secure its refund when he moved to other quarters.
>
> These conditions should be remedied. To the extent necessary to protect the public, these submetering companies should be placed under the jurisdiction of our public service commission. While it may not be necessary to make the control as comprehensive as in the case of public service corporations generally, it should extend at least to the rates charged, the deposits required, the interest paid thereon, and similar matters of vital concern to tenants.
>
> I recommend that public utility companies be required to offer consumers only one rate—the lowest one. The public service commission receives many complaints from consumers who for years have been paying a higher rate than their neighbors, simply because they are inexpert in making a choice between different complex rate schedules. Utilities with their staffs of experts are in a far better position to determine what rate consumers should receive. The companies, however, insist that the responsibility is entirely upon the consumer and that if he selects the wrong rate, they are in no way responsible. I do not agree with the companies and I do not believe that you will after studying this problem.
>
> I recommend that all public utility companies, subject to the jurisdiction of the public service commission, be required to keep only one set of books. In the investigations which the commission has conducted, it has been found that certain companies are really keeping two sets of books, one purporting to agree with the accounting systems prescribed by state and Federal authorities, and another on an entirely different basis showing the financial operations of the company in a light usually more favorable to the companies.
>
> Under the Public Service Law, railroads and common carriers are prohibited from keeping any other accounts or records than those prescribed by the commission or the Federal government. There is no reason why this rule, which has been effective for many years, and found to work no hardship upon the legitimate operations of any railroad or other common carrier, should not be extended to all other companies subject to the jurisdiction of the public service commission. This recommendation is not only in the interests of consumers but in the interests of the stockholders and should be promptly enacted.
>
> I recommend that the public service commission be empowered to require utility companies' books to show depreciation as well as original cost. This proposal is very vital to the prompt and efficient regulation of rates and a bill giving the commission adequate power in this connection should be enacted.
>
> The situation is very clear. Under legislation recently enacted by the legislature on my recommendation, the commission has required the utilities so to keep their accounts as to show the original cost of their proper-

ty and of other assets. The court of appeals and the United States Supreme Court have ruled that such a regulation is legal and proper.

The courts, however, have held that our present statutes do not give the commission authority to prescribe the method by which depreciation reserves shall be accrued or to determine to what extent existing reserves are insufficient. This authority is necessary. The courts have uniformly held that in determining the value of the property upon which the company rates are based, depreciation must be deducted. Furthermore, the courts have held that as a base for determining temporary rates, original cost less depreciation is the proper base. We have already required the companies to show the original cost in their accounts. In order to make the temporary rate law effective, the commission should be empowered to require the companies to maintain reserves in order that depreciation shall be currently shown on their books as well as original cost. Otherwise, you destroy the effectiveness of our temporary rate law.

Remember this same temporary rate law and other measures which have been enacted by the legislature in the last few years have saved the consumers of this state over sixty million dollars each year. You cannot, in all fairness to the consumer, deny the public service commission the authority to make rate reductions where justified.

Governor Lehman also repeated a previous recommendation that evidence illegally obtained by prosecuting authorities through the tapping of telephones or other communications wires should not be permitted to be used in the state courts.

IN Connecticut, Governor Hurley, addressing the legislature, first expressed the fear that the "invasion of our privately owned countryside under the guise of public utility expansion has become a threatening problem." He added:

In considering the problems connected with the public utilities it is the duty of government to safeguard, first and foremost, the public interest. The very nature of public utility enterprises imposes upon government a regulatory rôle, which it must fill justly, equitably, and without favor to any special interests. I am determined to see that this rôle is fulfilled.

I recommend that you review the status of public utilities in Connecticut. Your purpose in this review should be to achieve a more complete regulation of the companies concerned, and to establish a more just tax base to be applied to them. I also recommend that you provide for mandatory, periodic audits of our public utilities, the expense to be borne wholly by them, so that a proper rate structure for each of them may be equitably determined.

I recommend that you modify existing state laws affecting the rights of municipalities to own and operate public utilities. Such modification should enable the inhabitants of our towns and cities to engage in these enterprises whenever they clearly express their desire to do so. Present laws in their effect raise serious barriers against such undertakings, and this is a condition not in keeping with the spirit of a free people.

Governor McGrath of Rhode Island suggested to his legislature the establishment of a full-time bipartisan board of three members to administer the regulation of public utilities in that state. Governor McGrath stated:

Our two reorganization acts have recognized the quasi judicial function of the public utilities division. Supervision and control over utilities is of vital importance to the people of the state. I should like to see this department administered by a bipartisan board of three, each member of equal standing with the others and all giving their whole time to this work. I conceive the opportunity for the utilities division to be of far greater service to the people than heretofore has been the case. The state should not sit back and wait for a proposal to be made to it by a utility company and then pass upon the merits or demerits of the plan. The utilities division should be planning for the state and proposing improvements to the utilities. I hope the legislature will make it possible for us to have such a board in place of the present utilities division.

WHILE he did not mention utilities at all, the newly elected Governor Griswold of Nebraska, in his address to the unicameral of that state, made a very unusual recommendation for going easy on legislation of all kinds. This passage, in itself quite worthy of notice, was as follows:

We should enact just as little legislation as possible. The Nebraska statutes are already encumbered with laws that are obsolete and unenforceable. It is not just a matter of making needless changes or cluttering up the statute books. I believe that the habit of passing new laws has an even worse effect in that it causes the people to feel that they have access to

WHAT OTHERS THINK

"LOOK, BUTCH, GUYS WORKIN'! DISGUSTING WHAT SOME FOLKS WILL DO FOR A DOLLAR. HUMAN GREED, I GUESS"

a never-ending source of relief by getting the legislature to pass some new act. This habit of placing reliance upon legislation destroys the initiative of the individual and develops a citizenship which is entirely too dependent upon the state. In case of doubt, my suggestion is "Vote No."

I urge you to make this legislative session a short one and I think if that is done, you will receive more credit from the people than for anything else that you may do. In furtherance of that desire, I suggest that you introduce very few bills. Many times some change in the statutes, which you desire, can be brought up as an amendment to a bill which has already been introduced. By doing it that way, you will not clog the committees and you will speed legislative action. In case of doubt, my second suggestion is "Don't introduce it."

Without any ostensible expression of similar sentiment, other state legislatures may be preparing to follow the suggestion of Governor Griswold in the year 1941, which seems to be a year for Federal rather than state action. Of course, a number of bills on the subject of utility regulation and public ownership are likely to make their appearance during the legislation session. Lacking gubernatorial endorsement, however, it is not to be expected that very many of such bills will finally be enacted. This observation, of course, is entirely aside from the subject of taxation. Special bills affecting utility taxation will probably make their appearance later on during the legislative sessions, when more of the governors have completed their budget estimates.

SEC Considers Competitive Bid Rule

ON January 27th the Securities and Exchange Commission began hearings in Washington on its proposed rule to require open and competitive bidding on the underwriting of securities issued by utilities and other companies subject to the Public Utility Holding Company Act.

The purpose of these hearings was to give investment dealers and other interested parties an opportunity to be heard on the proposed rule, which was amply explained in a recent publication by the staff of the public utilities division of the SEC entitled "The Problem of Maintaining Arm's-length Bargaining and Competitive Conditions in the Sale and Distribution of Securities of Registered Public Utility Holding Companies and Their Subsidiaries."

This substantial booklet examined the experience of the commission in enforcing statutory requirements, the failure of the so-called "arm's-length bargaining rule" (Rule U-12F-2) to solve the problem to the satisfaction of the commission. The booklet also examined the case for competitive bidding and analyzed the arguments against competitive bidding. It contained comprehensive statistics on utility bond issues sold by competitive bidding, as compared with similar statistics on the distribution of private placements.

IN summarizing its recommendations, the commission staff publication stated in part:

> For the reasons developed in this report, we recommend the repeal of Rule U-12F-2 which has been demonstrably deficient in achieving the statutory objective of assuring maintenance of arm's-length bargaining and competitive conditions in the sale and distribution of securities of registered holding companies and their subsidiaries.
>
> In its place we recommend that the commission adopt a rule requiring competitive bidding in connection with the issuance or sale of utility securities subject to the commission's jurisdiction under the provisions of the Public Utility Holding Company Act. This recommendation is made not because we believe that competitive bidding is an end in itself, but because it has become apparent that such a procedure is necessary, under the conditions that prevail, to assure the maintenance of competitive conditions. The proposed rule may be summarized as follows:
>
> (1) It would apply to the issuance or sale of securities of registered public utility holding companies and their subsidiaries in an amount exceeding $1,000,000, with certain enumerated exceptions.
>
> (2) It would provide that the commission will not grant or permit any application or declaration subject to the proposed rule to become effective unless the applicant or declarant shall have invited sealed bids by published advertisement a reasonable period prior to entering into a contract for the sale of the securities involved.
>
> (3) It would also provide that such sealed bids as may be received shall be opened publicly at the time and place that was specified in the published advertisement.
>
> (4) Finally, it would provide that as soon as practicable after the opening of bids, the applicant or declarant shall file a statement with the commission setting forth (a) the action taken in compliance with the rule, (b) a copy of each bid received, and (c) a statement of the action which the company proposes to take.
>
> It will be observed that the proposed rule does not impose elaborate provisions relating to the technique or mechanics of competitive bidding. We believe that, initially at least, it is desirable to keep this phase fluid, partly to allow room for individual initiative in developing procedures best suited to particular situations and partly to await the dictates of experience.

AMONG the more important critical statements elicited by the commission's invitation for reaction to its staff's proposal was the 62-page brief filed by the Investment Bankers Association of America.

In view of the expressed opinion of certain of the members of the commission and the possibility that the commission might act quickly in adopting the proposals made by its utilities division, Emmett F. Connely, president of the IBA, in a letter accompanying the brief, asked the commission to join "in a request to have the broad questions of public policy involved in the proposed rule thoroughly explored at public hearings before the House Committee on Interstate and Foreign Commerce." He urged that meanwhile no action to place the

proposal in effect be taken by the commission.

The brief, which was prepared by the Securities Acts Committee of the IBA, headed by R. McLean Stewart of Harriman Ripley & Co., Inc., as chairman, stated that the proposal would "in operation be detrimental to the best interests of issuers, of security holders, of consumers, and of the investing public." It would be "discriminatory and unfair" to thousands of investors, country banks, and small dealers throughout the country who have had neither the time nor opportunity to study the voluminous report of the SEC staff, the reply continued.

Asserting that the report of the public utilities division "seems to be more of an attack on investment banking than a discussion of the economics of compulsory competitive bidding," Mr. Connely pointed out that business men, investors, and institutions dependent upon investments had been allowed only a few weeks, with the Christmas season intervening, to analyze and make reply to a report which experts of the SEC had spent months in preparing.

MR. Connely summarized the position of the IBA on the subject as follows:

1. Compulsory bidding would cause damage to investors, arising, among other things, from the overpricing of issues. Any increase in price to the issuer would be at the expense of decreased yields to the investor, whose interests the commission is under duty to guard.

2. The underwriter making the skimpiest and cheapest investigation and contemplating the cheapest distribution methods could afford to pay the highest price.

3. Purchase of securities at the highest possible price would tend to bring about high-pressure salesmanship, which reputable investment bankers seek to avoid.

4. The "competition of the market" by which every issue must be judged assures fair prices to the issuer and to investors.

5. Compulsory bidding would force the concentration of distribution into the hands of relatively few underwriters and dealers, to the detriment of small investors and dealers.

6. Compulsory bidding is not the best available means of judging the reasonableness of prices and spreads.

7. Compulsory bidding would not help the SEC meet its statutory responsibilities under the Holding Company Act. It would still be necessary for it to examine the reasonableness of price and spread after the bids had been received.

8. Compulsory bidding would conflict with the theory of the Securities Act which requires a thorough and searching investigation to be made by a responsible underwriter.

9. The advice of the investment banker and the professional work he does in setting up an issue could not be provided under compulsory bidding and could not be replaced.

Replies to the commission's request for comments and suggestions from various other quarters, including public utility executives or managements, large institutional investors, the National Association of Securities Dealers, Inc., and individual investment banking firms, were expected to be in the hands of the SEC by January 23rd. It was understood that the NASD would endorse the position taken by the Investment Bankers Association. (See p. 227.)

THE power of the commission, under the Public Utility Act of 1935, to adopt the recommendations of its utilities division was questioned in the IBA brief. It said:

> An over-reaching interpretation of the law, designed to set up administrative controls and accomplish purposes beyond those provided for by statute, is full of danger to the orderly processes of administration and is inimical to the public interest. We trust, therefore, that the commission will not follow the suggestion of the PUD staff and attempt to read into the 1935 act the power to deal with matters which are not within the province of that statute.

The brief emphasized the fact that the practice of competitive bidding "does not appear ever to have been voluntarily adopted as a general practice by public

utility or other issuing corporations, although the management of borrowing corporations has always been free to use competitive bidding if it thought such a method was the best method." Neither, it was pointed out, has the practice ever been requested by investors, here or in any other country.

Taking the commission's own statements on the volume of public utility securities placed privately (166 issues, amounting to $1,018,425,788 in the 6-year period 1934-1939), the brief declared that this development clearly demonstrated the "keen competition" that now exists in the purchase and underwriting of new securities.

Had there been an "absence of competition" for these issues or had there, in fact, existed any "domination" or "control" by investment bankers, it is surely not to be believed that, in view of their well-known opposition to "private placement," they would have failed to obtain for themselves the business of underwriting, or, at least, of participating in the underwriting of, the issuance and sale of these securities, the brief stated.

THE primary concern of Congress in passing the Public Utility Act was for investors and the public generally, the association pointed out. "The primary duty of the commission in administering the act is to hold the scales of justice even and not to exert the great force of its authority for the purpose of extracting from the public the highest price which can be obtained for the benefit of the issuer."

The brief further contended that the proposed competitive bidding procedure would, in effect, "break down the whole theory of responsibility which Congress had in mind in enacting the Securities Act of 1933. It would deprive the investing public of the protection now afforded by the responsibility for investigations attaching to underwriters. For, if the underwriter is to have no direct contact with the issuer, but is to be merely one of several dealers submitting bids, without adequate opportunity for the prior investigation of the facts concerning the issue, it is surely unreasonable under such circumstances to place on him the responsibility and the liability established by the 1933 act."

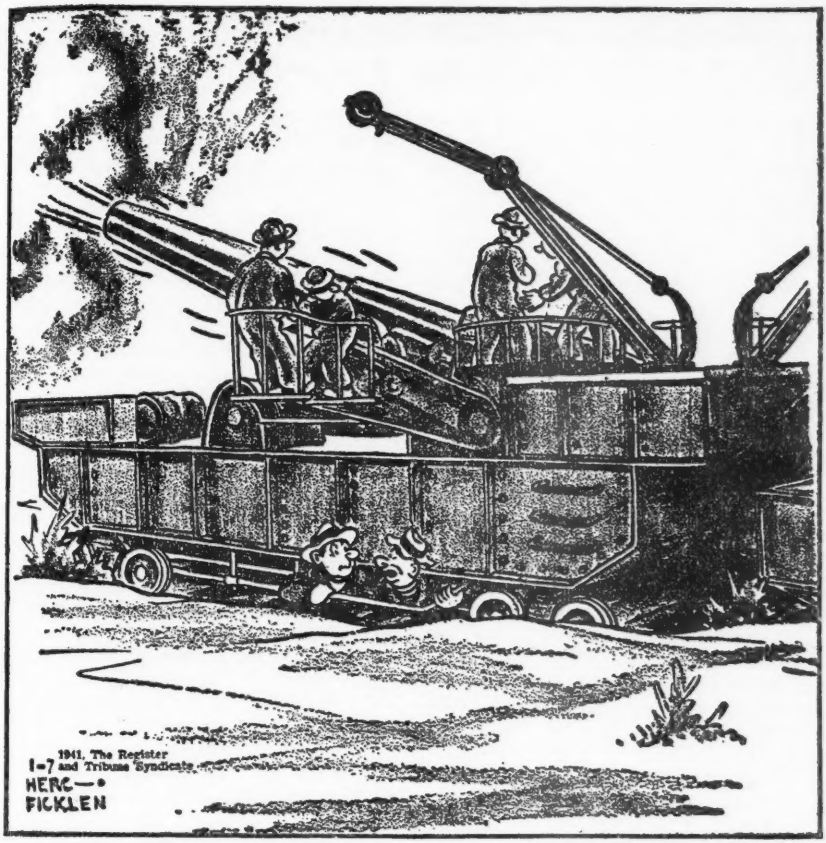
Mr. Connely, in his letter accompanying the brief, cited the constructive conferences that have been held during the last several months by representatives of the investment bankers and other interested parties with the commission. He said:

> While these discussions did not specifically encompass the Public Utility Act of 1935, it was our understanding that the conferences would deal with all problems arising under the 1933 and 1934 acts or having to do with the regulation of the exchanges or the regulation of underwriters and dealers. The commission itself and all other parties to these conferences have found, and have stated that, despite such differences of opinion as have existed, the conferences have resulted in a candid, objective, and helpful examination of the problems there discussed.

Other members of the Securities Act Committee of the IBA, which prepared the brief, are C. Lee Austin, Pittsburgh; Charles S. Cheston, Philadelphia; Emmett F. Connely, Detroit; Paul H. Davis, Chicago; Rush S. Dickson, Charlotte, North Carolina; Francis E. Frothingham, Boston; Edward H. Hilliard, Louisville, Kentucky; James J. Minot, Jr., Boston; Harvey Roney, Los Angeles; and John K. Starkweather of New York.

IN contrast with the position taken by the Investment Bankers Association in protest against the proposed competitive bidding rule was a statement by the investment banking firm of Otis & Co. of Cleveland, Ohio, long an advocate of the competitive bidding principle. It was as follows:

> The brief against competitive bidding for utility securities which the Investment Bankers Association has just filed with the Securities and Exchange Commission is nothing more than a restatement of the time-worn arguments developed by the beneficiaries of the present monopolistic conditions in the securities underwriting business.
>
> The IBA brief, which purports to answer the recent report of the SEC's utility division in favor of bidding for securities of utilities



Courtesy, The Cleveland Plain Dealer

"ARE YOU SURE THIS IS THE CHESAPEAKE & OHIO LINE?"

under SEC jurisdiction, fails to square with the facts. The record shows that issuer, dealer, and investor, alike, have for years benefited from the use of sealed bidding for municipal bonds and railroad equipment trust certificates. No amount of wordy speculation can brush aside the demonstrated success of bidding for these types of securities.

The greatest weakness of the IBA brief, however, is not in what it contains but in what it omits. The real issue involved in the competitive bidding controversy is simple and straightforward. Is the continued concentration of a major part of the securities underwriting business in the hands of a few investment banking houses defensible in a democracy? By continuing to ignore this question which was exhaustively considered in the SEC report, the IBA does neither its members nor the public the service they have a right to expect.

Mr. Connely answered this statement:

> I am not surprised at the general tenor of the Otis statement. It is in line with previous public statements by Otis & Co., whose views on compulsory bidding are well known to be in complete disagreement with the large majority of our members.

Mr. Connely suggested that because of the promptness of the Otis statement, and in view of the scarcity of complete copies, that the Otis firm might have drawn its conclusions from news accounts rather than an exhaustive study of the full text of the IBA brief.

New Deal Substitute for Logan-Walter Bill Favorably Received

THE reaction to the report of the so-called Acheson Committee, on the subject of reforming administrative procedure by regulatory bodies, appeared quite favorable in view of earlier critical comments on the work of this committee. Friends of the Logan-Walter bill (vetoed in such a vigorous fashion by President Roosevelt a few weeks ago) expected little more from the Acheson Committee than a recommendation for a watered down and badly mutilated substitute for the Logan-Walter bill.

Indeed, some of the more zealous advocates of the Logan-Walter bill had openly charged that the Acheson Committee was chiefly a dilatory device created by the friends of the administration for the purpose of stalling the progress of the Logan-Walter bill in Congress. The considerable delay of the Acheson Committee in bringing forth its report on administrative reform lent some color to this accusation.

The final emergence of the report on January 26th, however, showed that the committee had not only considered and given weight to the complaints against administrative abuse, but had embarked on a rather original course of reforming such abuses. Instead of being an apology for the present procedure of such regulatory agencies as the FCC, the SEC, and the FPC, the report freely grants the opportunities for evil under such a system, and recommends reforms.

THE principal feature of the Acheson Committee proposal is the creation of a new Office of Federal Administrative Procedure for continuous review of the practices of other administrative agencies. Another feature was the proposal to separate the judicial from the ministerial or prosecutive functions within the agency itself. Just how to accomplish this is a difficult problem—something like a mental resolve not to let the right hand know what the left hand is doing.

At present, regulatory agencies such as the SEC profess to have attained a considerable degree of independence between their "commission en banc" and the commission staff. The latter operates as a sort of district attorney to enforce the Holding Company Act, while the commission en banc acts as a court, sometimes overruling recommendations of its own staff and sometimes appearing to have little or no advance knowledge of such recommendations before the actual day of hearings.

However, the practical difficulty of severing ministerial from the judicial functions within the framework of the same commission organization to such a degree that everybody is satisfied concerning the independence of the two functions is immediately apparent. The Acheson Committee proposes that one method would be the creation of relatively independent "hearing commissioners," nominated by the particular regulatory agencies, but actually appointed after investigation, by the new Office of Federal Administrative Procedure.

The committee answered the familiar outcry against "hip-shooting rules" with the recommendation that, except in special cases, rules and regulations adopted by administrative agencies should not take effect until forty-five days after publication so that interested persons might meanwhile submit their views and comment. Incidentally, such publication would be definitely required—a practice which has not always prevailed in the early history of some of the New Deal regulatory agencies—although much improved since the Supreme Court criticism in some of the test cases involving such agencies.

A FOURTH contribution of the Acheson Committee is in the form of a recommendation for "declaratory" or advance rulings to eliminate uncertainties. The resistance of strict legalists against so-called "prophylactic" or pro-

hibitive types of administrative justice apparently did not impress the Acheson Committee. Under its proposal any person or party wishing to know his rights and obligations in a specific situation could request and obtain a ruling by the agencies.

Because of the broad variation in the type of agencies studied, the committee found it necessary to make particular, as well as general, recommendations for certain agencies. Thus, there are detailed suggestions for numerous bureaus, including regulatory boards charged with the regulation of certain phases of utility operations.

This type of treatment, incidentally, was believed to remedy one difficulty of the Logan-Walter bill which sought by broad limitations to correct unwise or exclusive delegation of powers by Congress in individual laws to particular commissions. The committee report suggests that such blunderbuss type of legislation could hardly cure the evils of an unwise grant of power to the NLRB or the FCC, or some other board. In other words, particular statutory shortcomings require particular statutory correction. There is no alternative for separate treatment. Instead, the danger of a broad reformatory short cut may be the hampering or crippling of certain regulatory powers which Congress might never have intended to touch at all. *The New York Times* stated:

> The recommendations of the Acheson Committee are too numerous, specialized, and technical for any blanket judgment to be passed upon them now. Both the majority report and the two sets of minority views, which go even farther in their suggested reforms, will require the most careful study. But there is no reason meanwhile for withholding praise of the fine judicial spirit of the report, and the obvious thoughtfulness and expert knowledge that have gone into it. This is precisely the sort of authoritative preliminary study that a reform of such a sweeping nature must have. It was this sort of study that led to the very necessary and sound revision of the Social Security Act. It is the sort of study that the British make through a royal commission, but which we have hitherto made use of all too rarely.

The Acheson Committee was composed of eleven members headed by Dean G. Acheson, Assistant Secretary of State. The members were appointed by the Attorney General some months ago.

A MINORITY statement was signed by Carl McFarland, former Assistant Attorney General under Homer S. Cummings; E. Blythe Stason, dean of the University of Michigan law school; and Arthur T. Vanderbilt, former president of the American Bar Association.

Chief Justice D. Lawrence Groner, of the District Court of Appeals, filed a separate memorandum in which he concurred with some of the views of the minority, though declining to support the legislative recommendations of either majority or the minority.

Concerning judicial review, the minority recommended:

> Until Congress finds it practicable to examine into the situation of particular agencies, it should provide more definitely by general legislation for both the availability and scope of judicial review in order to reduce uncertainty and variability.
>
> As the committee recognizes in its report, there are several principal subjects of judical review—including constitutional questions, statutory interpretation, procedure, and the support of findings of fact by adequate evidence.
>
> The last of these should, obviously, we think, mean support of all findings of fact, including inferences and conclusions of fact, upon the whole record.
>
> Such a legislative provision should, however, be qualified by a direction to the courts to respect the experience, technical competence, specialized knowledge, and discretionary authority of each agency. . . .
>
> On the other hand, and again to offer only a single example, if Congress should desire only a minimum of review of fact questions arising under employees' compensation legislation, these, too, could be singled out for special treatment.
>
> Without attempting to analyze the various types of cases and to formulate the proper standard of review to be applied to each, a few general observations may be made.

The minority stated that, though the judiciary cannot be expected to do the work of administration, it should be utilized to protect against clear error. The graver the possible effects of the error, the more searching should be the judicial power of review.

The March of Events

Court Test Seen

EXECUTIVES of leading public utility holding companies controlling utility properties with an asset value of approximately $6,000,000,000 were reported to be virtually of the unanimous opinion that the "yardstick" integration report issued by the Securities and Exchange Commission against the United Gas Improvement Company late in January would lead to a court test by the utility industry of the constitutionality of the so-called "death sentence" clause of the Holding Company Act.

In its findings in the UGI integration case—issued by the commission in the form of a tentative plan of integration for the company—the SEC held that the holding company should confine its operations to a single integrated region in a tri-state area some 80 miles by 30 miles in size, with the Philadelphia Electric Company as a base. Certain other non-utility properties held by UGI considered coincidental to the operation of the system could be retained, the commission stated, but the holding company should divest itself of holdings in Arizona, Kansas, Tennessee, Connecticut, and New Hampshire.

Should the commission's report on UGI become final, the company would be required to dispose of some $275,000,000 of book value assets, being allowed to retain about $350,000,000 of utility properties. However, in commenting on the SEC findings, officials of UGI indicated they did not agree with the commission's conclusions as to what constituted an integrated system. Further, they said, they did not agree with the commission's view of the law.

The holding company pointedly made reference to the statement issued by Jerome N. Frank, chairman of the SEC, in connection with the integration report, to the effect that if the company disagrees with the commission's final decision, to be determined after hearings, it may carry the case to the courts. There was every indication in the UGI comment that, unless material revision were made in the integration report as it applies to the UGI system, the entire issue would be taken to the courts.

Issuance of the SEC integration "yardstick" in the UGI Case marks the first such plan to be made public by the commission in connection with the integration proceedings of the Holding Company Act, which were started about six months ago. When the hearings started, UGI, with several other holding companies, requested tentative plans of integration. With the UGI finding out of the way, it is expected that integration reports will be issued shortly to other major systems.

A canvass of leading utility executives brought forth varied, and for the most part, critical comment on the UGI report.

"It is the strictest and narrowest possible interpretation of the integration clause of the law that could be laid down," the president of one of the largest holding companies declared. "I am surprised at the length to which the commission went in limiting operations to a single system. Undoubtedly, if such an interpretation is to prevail, there will have to be a legal test of the law."

The chief executive of another system made the observation that, with the war raging in Europe and industry in this country trying to do a full-time job on national preparedness, it "seemed rather peculiar that the SEC at such a time should attempt to disrupt registered holding companies with such proceedings."

This particular executive, pointing out that the UGI system, according to the commission report, would be limited to assets of about $350,000,000, raised the question as to how the commission would feel about such utility systems as those serving cities like New York and Chicago, whose assets were $1,200,000,000 and $800,000,000, respectively. The Consolidated Edison Company of New York and the Commonwealth Edison Company of Chicago, by virtue of the fact that they are not engaged in interstate commerce, do not fall under SEC jurisdiction within the provisions of the Holding Company Act.

SEC Issues New Form

CALLING upon utility holding companies for the first time to reveal their estimated earnings for the coming year and to break down "public relations" and advertising expenditures into several classifications, the Securities and Exchange Commission on January 17th issued a new form for the annual reports which registered public utility holding companies must submit to the commission.

The new form also requires utility holding

companies for the first time to state their open account indebtedness to associated companies and to disclose any profits which their officers or directors may have made by buying or selling securities of the holding company or any subsidiary in violation of § 17(b) of the Holding Company Act.

Another new requirement is that utility holding companies must list all officers receiving $10,000 a year or more in aggregate compensation, whereas the minimum before was $20,000.

TNEC Suggests Laws

A CONFIDENTIAL report containing specific recommendations for legislation to meet alleged industrial and investment problems arising from "concentration of economic power" was recently reported in final stages of preparation by a group of Temporary National Economic Committee experts. Because of the nature of the document, Chairman O'Mahoney was said to have decided that it must go to the full TNEC group for review and revision before it is made public. Heretofore, other reports of the TNEC staff have been cleared through a 3-man subcommittee on review.

The TNEC's final report would be made to Congress and it was anticipated by some members that the report of the committee staff would form the basis for TNEC legislative recommendations.

There was reported to be grave doubt among some committee members, as well as New Deal officials, however, whether any of the committee's proposals would reach the enactment stage at this session of Congress. Chairman O'Mahoney said that "little attention is likely to be paid for the present to what we may offer."

Power Grid Seen

ASSISTANT Bonneville Administrator U. J. Gendron recently stated that completion of a 650-mile, triangular-shaped, 230,000-volt transmission grid linking Bonneville, Puget Sound, and Grand Coulee would be the primary job if Congress approved President Roosevelt's budget message proposing $12,957,900 for the Bonneville Power Administration.

Nearly $7,000,000 of the proposed figure would be earmarked for closing the present gap by construction of a line between Grand Coulee and Covington, near Puget Sound, and a new, third circuit between Bonneville and Vancouver, Gendron said.

Not only would these two units close the gap in the 650-mile circle, said Gendron, but they would link both Grand Coulee and Bonneville dams with the major population centers of Oregon and Washington and strengthen the agency's ability to meet defense and peace-time needs.

Another $2,000,000 of the proposed appropriation would be reserved for lines from Grand Coulee dam, soon to go into production of power, to transmit defense loads, Gendron stated.

Ask Power Agency

THE formation of a separate regional agency with the form, rights, and powers of a public corporation to administer Federal power facilities in the Northwest was recommended to the National Resources Planning Board recently by the Pacific Northwest Planning Council.

The council, which met last month in Spokane, Washington, asked that the power agency be unburdened financially with "other types of service incapable of self-support."

Walter C. Clark of Kellogg, Idaho, representing the Idaho State Planning Board, led the discussion with a plea for the development of power, reclamation, and flood control under separate, but coöperating, agencies, making the Bureau of Reclamation and the Army Engineering Corps as the logical organizations to handle the latter two programs.

Working with Clark are David Eccles, executive secretary to the governor of Oregon; D. P. Fabrick, chairman of the Montana State Planning Board; B. H. Kizer, chairman of the Washington State Planning Council; and Consultant R. F. Bessey of Portland.

ICC and Competitive Bidding

THE Interstate Commerce Commission was recently reported to be giving "serious consideration" to proposals that it extend to some other forms of railroad financing the competitive bidding rule it now employs in connection with the sale of equipment trust certificates. (See page 234.)

Whether the commission planned any action in the near future to require competitive bidding on other types of rail issues was not known, but the ICC finance division was reported to be inclined to favor sealed bids on the underwriting of high-grade terminal issues and "other comparatively simple" issues.

That the commission was giving consideration to this matter was disclosed in a letter by Chairman Joseph B. Eastman to Otis & Co., Cleveland investment firm. The chairman's letter was in response to a telegram from Otis & Co. in which the ICC's attention was directed to recommendations made recently by the Securities and Exchange Commission's public utilities division that a competitive bidding rule be adopted for all utility issues over $1,000,000. The company inquired as to whether the ICC would favor such a rule for additional railroad financing, particularly terminal issues.

Chairman Eastman said the division of the ICC which deals with such matters was inclined to regard with favor the extension of

such bidding to terminal issues and other comparatively simple situations "and is also watching with much interest the experiments being made by the Securities and Exchange Commission."

The ICC has required that railroad equipment issues be offered at competitive bidding since 1926, but has never seen fit to extend the principle to other types of railroad financing.

New Rates to Bring Saving

RATE revisions and elimination of developmental surcharges and amortization announced by the TVA recently, would result in savings of more than $39,000 annually to power customers of 10 municipal and coöperative distributors of power. Knoxville already operates under these rates and will not be affected, it was announced.

Rate revisions reportedly would account for savings of $28,443 to commercial and industrial consumers in Lewisburg and Newbern, Tennessee; Sheffield, Alabama; Starkville, Tippah, Columbus, and Prentiss county, Mississippi.

Lewisburg, Prentiss county, Tippah, and Tuscumbia, Alabama, would save about $10,000 through lifting of the surcharge.

Arizona

River Authority Bill Introduced

GOVERNOR Sidney P. Osborn's Arizona Water and Power Authority bill, said by the administration to be the solution to some of the state's economic ills and designed to put to beneficial use resources of the Colorado river, was introduced in the legislature on January 24th.

The proposal, covering 147 pages, is one of the major pieces of legislation sought by the Osborn administration. It was introduced in the state senate by Senator William Coxon of Pinal county. Seeking a $250,000 special appropriation and creating a power authority of three members, whose salaries would be $15 a day, not to exceed $3,000 annually, the measure was said to have two principal purposes.

Under the proposed authority, control and administration of the water and power resources of the Colorado river would pass to the new body from the Colorado River Commission. The bill also provides that the river authority would take over the functions of state water commissioner, state certification board, board of reservoir control, and similar units whose powers and duties should, the administration said, be concentrated in a central authority. Objectives of the authority under the law would be the development of the water and power of the river and its tributaries by means of primary projects initiated by the authority or by coöperation with local organizations.

The $250,000 special appropriation would be returned to the state treasury when Arizona receives its share of revenue from sale of Boulder dam power. There is $900,000 due the state for 1938, 1939, and 1940 and another $300,000 due this year.

The bill was said to embrace substantially the proposals sponsored during the past five years by various groups.

California

New Commissioners Take Seats

THE three new members of the Los Angeles Board of Water and Power Commissioners, Edward A. Dickson, Clinton E. Miler, and C. Clarke Keely, were welcomed at their first meeting of the board in mid-January by President James B. Agnew and Commissioner William Himrod. Their nominations were made by Mayor Bowron and confirmed by the city council after an appointment deadlock of several months.

Agnew and Himrod took occasion to thank the retiring member, W. R. Fawcett, for his work on the board and to express their appreciation and "the appreciation of this department and the water and power users of the city for the unselfish, courageous, and very effective service that he has rendered as a member of this board."

Proposes Change in Water Litigation

UNDER terms of a bill introduced in the state assembly on January 20th, municipalities or other political subdivisions would be placed on the same footing with individuals or private corporations in certain forms of water litigation.

The bill was directed at the right of prescription enjoyed by political subdivisions involved in litigation over water rights. A case illustrative of the situation complained of by proponents of the measure was described as

the litigation involving the city of Pasadena and other water users drawing water from the underground basin tapped by Pasadena. Similar litigation might be expected involving other municipalities which are members of the Metropolitan Water District, it was said.

Rate Cut Expected

RATE reductions totaling about $1,000,000 for consumers of the Southern California Edison Company were recently reported to be under consideration by the state railroad commission. This was disclosed when a study of the utility's assets was made public to several representatives of cities and counties served by the company. Presenting a preliminary report, Director E. F. McNaughton of the public utilities department of the commission said the nature and amount of the rate reductions had not been established.

Estimating the earnings and expenses for the company in 1941, the report anticipated a net revenue of $22,202,264 as against a rate base of $348,447,000, which gives a return rate of 6.37 per cent. Operating expense totals $26,169,236. Allowing the utility, which serves a territory of 12,000 square miles having a population in excess of 1,500,000, a flat rate of return of 6 per cent, the commission expects the electric rate reductions to total about $1,000,000.

E. F. Reynolds, engineer for the board of education, suggested the commission ask the utility to adopt one standardized rate for schools. At present schools are being served through different lines for their various departments.

Colorado

Chamber Backs AVA Fight

GOVERNOR Ralph L. Carr, at a recent meeting of the board of directors of the Colorado state chamber of commerce, made an urgent recommendation for coöperation of Colorado business and agricultural interests to bring about the defeat in Congress of the Arkansas Valley Authority bill, which proposes construction of power-generating units on the Arkansas river watershed.

The governor stressed the fact that enactment of the AVA bill would jeopardize Colorado's water rights and endanger the state's future. He urged that business and agriculture unite with the Colorado chamber in an organized protest to Congress. Unanimous approval of the governor's request was voted by the board of the state chamber.

L. Ward Bannister, Denver attorney and director of the Chamber of Commerce of the United States, and Clifford H. Stone, director of the Colorado water conservation board, supported Governor Carr's recommendation.

Would Abolish Commission

A MEASURE introduced in the state house of representatives of the thirty-third general assembly on January 15th by Representative A. Dean Coleman of Boulder, Republican floor leader, would abolish the state public utilities commission and create a new department to take over the duties of that body.

As majority floor leader, Coleman presented the administration bills sponsored by Governor Ralph L. Carr, but refused to state whether the public utilities measure was included in the governor's official program.

Coleman also presented two bills to control loan companies and industrial banks as recommended by Governor Carr in his address to the assembly. Other bills would impose a state franchise tax on public utilities and prohibit retail merchandising by public utility power companies.

Florida

Rate Cut Demanded

CITY Commissioner R. C. Gardner demanded a reduction in Miami's electric and water rates recently, but neglected to move formally for a rate inquiry. Gardner, identifying himself as "the people's representative," inferred he expected to be alone in ordering the Florida Power & Light Company to cut its charges by an approximate $1,000,000 annually.

He was challenged, however, by Commissioners C. D. Van Orsdel and Fred W. Hosea, who predicted unanimous support should a fact-finding inquiry establish overcharges by the company. Commissioner Gardner was expected then to move for the investigation after a pending motion had been cleared, but his opportunity was overlooked.

Gardner's demand occurred after the presentation of a resolution extending, for the sixth time since 1938, permission to the Florida Power & Light Company to use optional rates instead of those prescribed by Ordinance 1066. Permission was granted.

"So long as we don't ask for a reduction," said Gardner, "the power company won't give it to us—and I don't blame them."

Illinois

Settle Tax Dispute

SETTLEMENT of protested personal property taxes between the Peoples Gas, Light & Coke Company and officials of Cook county, recently arranged, would enable the company to transfer to surplus a substantial portion of the tax reserves it had set up.

By making a settlement of its protested personal property taxes through the immediate cash payment of $2,825,903 thereon, the company obtained a waiver of $3,500,000 in the claims which were being litigated with Cook county. As a part of the settlement, the basis for the company's future personal property assessment was revised to eliminate items on which levies were formerly made, but which had become largely nonexistent.

Indiana

Gas Rates Approved

THE public service commission, in an interlocutory order, recently approved a schedule of gas rates submitted by the Hoosier Gas Corporation, serving Vincennes, Washington, and Princeton and adjacent rural territory. The commission's order held the present rates to be unfair and unreasonable.

The corporation was ordered, however, to file a report every sixty days, beginning March 15th, on the results of its operations under the new rates and of efforts being made to obtain a cheaper supply of gas. Commissioner William A. Stuckey indicated the rate case might be reopened after a study was made of the operations under the new schedule.

The commission held that the operating loss complained of by the corporation was "almost wholly due" to the failure of the gas supply formerly available from near-by Indiana fields. The corporation was compelled to purchase its supply from the Kentucky Natural Gas Corporation, it was found.

Maryland

Commission Report

POWER companies operating in Maryland built more than 960 miles of new rural power lines in the 1940 fiscal year, compared with 550 miles the previous year, the state public service commission reported last month. The extension of rural power facilities was encouraged by the commission, the report said. Figures compiled as of last June 30th showed 16,500 farms in Maryland were receiving electric service.

The commission also reported an increase of 23,000 telephones in the fiscal year by the Chesapeake & Potomac Telephone Company of Baltimore City. Approximately half of the stations added were in the smaller towns and rural areas. A survey was started last year to determine all communities in Maryland which were without telephone service. There were eight such communities at the beginning of 1940, the commission asserted, and "by the end of the year service had been extended to four of these."

Seven power utilities reduced their rates last year because of negotiations with the commission. The largest of these reductions was one amounting to approximately $115,000 a year, negotiated with the Potomac Electric Power Company.

The commission also called attention to its investigation of the rates of the Claiborne-Annapolis Ferry Company, which resulted in an order to reduce rates by $54,000, and in an appraisal on which was based the subsequent purchase agreement with the state.

Looking forward to 1941, the commission predicted a sizable expansion of utility capacity to meet the demands of the national defense program in Maryland.

Michigan

Gas Users Unite

ORGANIZATION of the Metropolitan Gas Users' League was completed recently at a meeting of approximately 250 persons, most of them Detroit home owners who use gas supplied by the Michigan Consolidated Gas Company to heat their homes. The objectives of the organization, according to R. G. Aronstam, chairman of the committee, are "to pro-

vide temporary relief to gas users from exorbitant gas rates and to work for a reasonable rate."

New gas rates recently established by the gas company, as ordered by the Michigan Public Service Commission, cut the rate for most types of gas usage but increased the rate for gas furnace heating. Various proposals were brought up at the meeting. One man suggested that members of the organization discontinue the use of all types of gas utilities in their homes. Another suggested that the Reconstruction Finance Corporation be asked to provide Detroit with funds to install competing gas lines.

Speakers included Norman H. Patterson, city commissioner of public utilities, who announced he had conferred with Prosecutor William E. Dowling concerning gas rates. According to Patterson, Dowling advised all persons not satisfied with the new gas rates to mail complaints to him so the complaints could be brought before the state public service commission.

Governor Van Wagoner recently revealed his interest in the gas rate issue.

A house investigation of gas rates in the Detroit metropolitan area was proposed in a resolution recently offered by state Representatives William G. Buckley, of Detroit, and Frank J. Calvert, of Highland Park. The resolution was sent to committee, and proposed that a committee of three members make an inquiry "with the end in view of correcting the situation, if necessary, through legislation." Buckley said the recently ordered increase in space heating rates was one reason for the proposal.

The commission was expected to reopen the case at a hearing February 5th.

Minnesota

Pipe-line Control Opposed

THE St. Paul city council last month unanimously voted opposition to proposed legislation placing regulation of natural gas companies in cities under jurisdiction of the state railroad and warehouse commission.

The council adopted a resolution memorializing the Ramsey county delegation in the state legislature to fight the proposal, sponsored by the Natural Gas Consumers Research Bureau, Inc., Minneapolis, which would designate all pipe lines in the state as common carriers.

William Parranto, commissioner of public utilities, asserted the proposal would be another step in the direction of stripping cities of self-governing powers.

Parranto last month introduced in the city council an ordinance to grant a 1-year permit to the People's Natural Gas Company to operate in the city. The permit would be the second for this company of three which are allowed by the city charter before it must have a franchise voted on by the public.

Mississippi

Rate Fight Back in Court

REVERSING a district court judgment, the fifth Federal Circuit Court of Appeals on January 17th held that a suit by the Mississippi Power & Light Company involving its gas contract with Jackson, Mississippi, was within the district court's jurisdiction.

The petition of the company had been dismissed June 18, 1940, by Judge S. C. Mize on a motion by the city that the court was without jurisdiction, because, the defendant argued, the suit in effect was one to enjoin the rate-making privileges of a political subdivision.

Reviewing the petition of the company, the circuit court found that the company had a contract to furnish gas at a fixed rate from the Jackson field, with an optional provision to seek gas elsewhere for Jackson use; that the Jackson field now is insufficient and that the company is utilizing foreign sources; that the city refuses to recognize the changed conditions and to fix reasonable rates for the pipe-line gas the company is compelled to furnish.

The company asked the district court to decide either (1) that the company has the right to furnish pipe-line gas from other than the Jackson field and that the old rates do not apply, or (2) that, if the company does not have the right to furnish pipe-line gas from elsewhere, it has a right to discontinue supplying the city.

Remanding the matter to the district court, the appellate court in its opinion stated as follows:

"Neither in terms nor in purpose does the act (the Johnson Act on which was based the motion for dismissal for lack of jurisdiction) extend to cases of this kind where rates as such are not in question, and neither injunctive nor other suspensive orders are asked for, but there is merely an invocation of jurisdiction, under the declaratory judgment act, to determine and declare rights under a contract which must be settled and determined before either party can safely or justly proceed."

Missouri

Utility Company Indicted

THE Union Electric Company of Missouri and Louis H. Egan, its president from 1920 to 1939, were indicted by a Federal grand jury on January 17th on a charge of conspiracy to violate the Public Utility Holding Company Act of 1935.

The indictment alleged that financial contributions, which are prohibited by the act, were made "to and in support of political parties" and "in connection with candidacies, nominations, elections, and appointments."

The company's political activities in behalf of itself and subsidiaries were declared to have extended from the government of the United States to "the governments of the states of Missouri and Illinois, and political subdivisions, agencies, authorities, and instrumentalities of said states."

Frank J. Boehm and Albert C. Laun, former vice presidents of the $250,000,000 utility system, were named as conspirators but not as defendants in the indictment.

Nebraska

Seeks Authority to Sell

THE Iowa-Nebraska Light & Power Company, a Delaware corporation, having its principal business office at Lincoln, Nebraska, recently applied to the Federal Power Commission for authority to sell the major portion of its electric utility system in the state of Nebraska to the Consumers Public Power District of Nebraska at a proposed purchase price of $19,465,000, subject to certain adjustments.

The proposed sale, according to the application, would comprise all of the applicant's Nebraska electric utility system except the 66,000-volt transmission line from the substation at Plattsmouth, Nebraska, to the Missouri river crossing. The gas utility systems operated in Nebraska, Iowa, and Missouri, and the electric properties in Iowa and Missouri were not included in the company's petition for authority to sell.

The application stated that the facilities proposed to be sold are located in 28 Nebraska counties and include three principal steam-generating plants, two at Lincoln and one at Norfolk, Nebraska, having total installed capacity in excess of 40,000 kilowatts; 1,341 miles of transmission line, and 525 miles of farm lines; all substations serving communities in which energy is sold; and distributing systems in 94 cities and villages in Nebraska and the adjacent rural areas, furnishing service to more than 46,000 customers.

A copy of the agreement of sale dated January 18, 1941, between the applicant and the Consumers Public Power District, for which approval was sought, was one of several exhibits filed with the FPC as part of the application.

New Jersey

Wins Tax Appeal

THE Essex County Tax Board dismissed late last month $203,015,509 in intangible personal assessments for 1939 filed against 24 subsidiaries of the Public Service Corporation by the city of Newark. The board ruled that the intangibles, consisting largely of cash and securities, were exempt from taxation by the city under Chapter 8 of the tax laws of 1938, because utilities are subject to franchise and gross receipts taxes. If upheld by the board, the assessments would have allowed Newark to collect $9,846,252 in taxes from the companies.

The city never before sought to tax the intangibles of the utilities. It was attempted this year by Finance Director Vincent J. Murphy under a contract authorized by the city commission with Alfred L. Kirby, former president of the Newark Tax Board. Under the contract Mr. Kirby, who argued that the tax law had been changed to permit assessments, was to receive a percentage of any tax collections resulting.

Previously the Monmouth County Tax Board was restrained by the state supreme court from making such assessments.

Oppose St. Lawrence Project

THE New Jersey senate adopted on January 21st a resolution memorializing Congress to turn down the proposal that the United States collaborate with Canada in construction of a St. Lawrence river waterway.

Senate Majority Leader Alfred E. Driscoll, sponsor of the resolution, said construction of the waterway would divert commerce from New Jersey ports.

New York

Measures Reintroduced

SENATOR Coudert of Manhattan last month reintroduced two measures in the state legislature on wire tapping and unreasonable searches and seizures which were passed in both houses last year under separate sponsorship, but which died in the closing hours of the session because of the failure of either house to enact a bill identical with one passed by the other house. Governor Lehman, in his message to the legislature, recommended that the bills be passed this year.

The bills would provide that no evidence gained by wire tapping would be admitted into court or any investigation unless an *ex parte* order has been granted permitting the tapping. Before an *ex parte* order might be granted, the police officials must inform the court that they believe that there are reasonable grounds that evidence of a crime can be obtained by the tapping.

The court must satisfy itself of the need for such tapping before issuing the order, and all such orders are to be given only for a period of not more than six months.

In the state assembly, Robert J. Crews, Brooklyn Republican, reintroduced two anti-discrimination measures which he sponsored last session. The first prohibits employment agencies from discriminating because of race, creed, color, or religion and makes agencies found guilty of discriminatory practices liable to suspension or revocation of their state license.

The second prohibits discriminatory practices by utility companies. Violations by utility officials constitute a misdemeanor, punishable by a fine of from $100 to $500 or a jail sentence of from thirty to ninety days, or both.

Oklahoma

Review of Cases Urged

AMENDMENT of the law to keep public utility rate litigation out of the Federal courts was proposed in a bill introduced last month in the state house of representatives by Robert A. Hert, of Payne county.

The bill, which would vitalize the Federal Johnson Act in Oklahoma, provided for judicial reviews by the state supreme court of utility rate cases appealed from the state corporation commission, instead of the reviews now made in such appeals. Under present procedure, Hert explained, rates fixed by the state commission may be changed by the state supreme court if, during an appeal, the court considers the rates set unfair.

Because the court has this rate-fixing authority, he added, the utility affected may take the case into Federal District Court and the Federal court may fix rates.

Grand River Dam Case

THE conflict between the Federal government and Governor Leon C. Phillips of Oklahoma, who called out the militia last year to prevent completion of the Grand River dam, was taken under consideration on January 15th by the United States Supreme Court.

The Grand river project received $6,562,000 from the government, which also purchased $11,563,000 of the bonds as part of a public works program. Thereafter a dispute arose between Oklahoma and the government over payment for roads and bridges to be flooded.

Pennsylvania

Rate Cut Proposed

THE state public utility commission was recently reported considering a proposal of the Philadelphia Electric Company to cut its rates $3,000,000 a year. The offer was made by Horace P. Liversidge, company president, at a conference with the commission in Harrisburg on January 15th. The sum, contrasting with the company's original offer of $1,300,000, was said to meet the lowest figure set by commission members.

Demands of individual members of the 5-man commission, which launched an investigation of the company's rates and service last November, range to $5,000,000. The state utility commission was expected to accept the new offer.

Such a slash would be spread among consumers in various classes by a rate schedule to be prepared by the company subject to commission approval.

"Bootleg" Trucking Decried

THE state public utility commission warned recently that it would combat "bootleg trucking" if necessary to protect carriers who operate under regulation by the commission.

The commission made final two orders affecting the moving of household goods by truck—one which sets a "little NRA" scale of

minimum prices for hauls of 40 miles or more and another which establishes weight as the basis for charges for moving household goods. Several exceptions to the orders were dismissed by the commission on the ground that the terms of the orders might be modified if they proved burdensome. One group protested against the weight-rate order.

South Carolina

Buys Power System

THE South Carolina Public Service Authority last month purchased the properties of the South Carolina Utilities Company, of Conway. This was the first of a series of prospective purchases the authority hopes to make of privately owned electric utilities in South Carolina.

Negotiations have been under way for some time looking to the state authority's acquisition of the properties of the South Carolina Electric & Gas Company, of Columbia, and the Lexington Water Power Company, which owns the large Lake Murray hydro development 16 miles north of Columbia.

Approval of the state public service commission was necessary to complete the transaction. John C. Coney, chairman of the commission, announced that a public hearing would be held on February 5th on the subject.

The authority entered into an agreement with the utility company to pay approximately $750,000 for the properties. It was specified that actual transfer of the property take place between January 15th and March 1st.

Tennessee

Private Power Denied

THE Tennessee Railroad and Public Utilities Commission recently denied a petition by T. F. Lance and 24 other suburban residents of Franklin for a transfer in their service from an electric coöperative to a private power company, it was announced by W. D. Hudson, member of the commission.

The petitioners, all living near the territorial boundary between the Middle Tennessee Electric Corporation, distributor of TVA power, had charged the coöperative's rates were higher than those of the Franklin Power & Light Company, also a distributor of TVA current.

Hudson said that a contract between the power company and TVA provided that the company should not invade territory served by the coöperative.

Describing the case as the first of its kind in the nation, Hudson said the decision would affect the whole electric power system of the country. He continued:

"We are not going to set a precedent for the invasion of territory by competitive utilities."

Utah

Natural Gas Tax Proposed

SENATOR George M. Miller, Democrat of Price, introduced a natural gas tax bill in the state legislature last month which would levy an excise tax of 2 cents per thousand cubic feet on all natural gas sold or delivered for use within the state. It specified that this tax would be paid or absorbed by the gas corporation. The tax revenue would go into the state general fund, to be used for the reduction of tuition fees charged by the junior colleges and lower divisions of the University of Utah and Utah State Agricultural College.

Washington

To Vote on Power Issue

THE Spokane city council last month adopted an emergency ordinance referring to the voters on March 11th the proposal for the city to take over the electric distribution system of the Washington Water Power Company.

It was estimated that a municipal system would cost about $6,500,000.

In another emergency ordinance, the council decreed that the Pacific Telephone & Telegraph Company should pay the city $125 a day from last August 11th, when the old company franchise ran out, until a new franchise is signed.

The Latest Utility Rulings

Notice of Simplification Proceedings Under Holding Company Act

A MOTION to dismiss the notice of, and order for, a hearing, or in lieu thereof to quash the return of service, in proceedings instituted by the Securities and Exchange Commission under § 11 (b) (2) of the Holding Company Act, was denied by the commission where the motion was based upon the ground that the notice had not been served on stockholders who do not reside within the continental United States. It was asserted that certain securities were held by persons residing abroad and it was contended that under the provisions of the Federal Register Act publication in the *Federal Register* is deemed notice only to "persons residing within the continental United States."

Notice of and the order for hearing had, pursuant to commission direction, been sent to the respondent by registered mail, distributed to the press, mailed to those on the mailing list, and published in the *Federal Register*. The commission did not consider it necessary to decide whether the holding company stockholders were entitled to notice, for even assuming the existence of such a right, it was held that its requirements were adequately met by the notice that had been given. It was observed, however, that the presence of security holders as such is not indispensable in these proceedings as the final order is addressed, by the terms of the Holding Company Act, § 11, only to a registered holding company or subsidiary thereof. The commission continued:

> While our final order may deal with the rights of stockholders, it will be addressed only to the corporations, and any effect these proceedings may have on the rights of stockholders will result from such action as the respondents take pursuant to the order. Consequently, as to respondents' stockholders, the proceeding would appear to be essentially *in rem*, the *res* being either the corporation itself or the relationship of the security holders to each other and to the corporation, springing from the corporate charter and the ownership of securities issued thereunder. The moving respondent, however, has its situs in Maine, under whose laws it was organized and where it is consequently domiciled. Moreover, the rights of respondent's shareholders, as such, also have their situs in Maine, for rights arising from the ownership of stock are deemed, regardless of where the certificates may be, to have their situs at the corporation's domicile. Consequently, both respondent and the rights of its shareholders are within our jurisdiction which extends, under the act, throughout the nation. Under these circumstances, since the act does not specify the means of notice, we may, in our discretion, select any method of notice reasonably calculated to reach any stockholder to whom notice may be due.

The *Federal Register* is the publication prescribed by law for the advertising of notice of proceedings under the Holding Company Act. Therefore anyone whose securities are likely to be affected by such proceedings might reasonably be expected, said the commission, to consult the *Register* as the one publication ordinarily used for the advertising of such proceedings. The commission continued:

> Consequently the *Register* would appear to be at least as good a medium of notice as any privately owned newspaper circulated in continental United States. It follows that although the Federal Register Act does not, as a matter of law, make publication in the *Register* notice to those residing outside continental United States, there is no reason why we may not, in the exercise of our discretion to choose a reasonable means of giving notice, select the *Register* as the medium for advertising the pendency of proceedings before us.

Re Northern New England Co. et al. (File No. 59-15, Release No. 2464).

North Dakota Commission Considers Depreciation, Going Value, and Customer Contributions

In the determination of proper rates for an electric utility company the North Dakota board allowed a 6 per cent return on a rate base determined by weighing the factors of original cost and reproduction cost. Evidence in support of going concern value was held to be insufficient where based upon development costs and early lag in earnings without proof as to whether these items had been charged to operating expense.

The company had been accruing annual depreciation at a rate of 5 per cent of operating revenues, but this method and percentage had failed to provide for the actual retirements. The board said that the better method of calculating annual depreciation accruals is straight-line depreciation accounting based upon original cost of depreciable property. A 4 per cent depreciation rate was approved. It was said that the same factors which cause annual depreciation are also responsible for the accrued depreciation or accrued loss in service value, and, accordingly, the rate base should be a depreciated figure. The commission continued:

> As applied to a depreciable utility plant, depreciation is the loss in service value not restored by current maintenance and incurred in connection with the consumption or prospective retirement of the utility plant in the course of service from causes which are known to be in operation and against which the utility is not protected by insurance. Sound, consistent accounting would indicate that such depreciation must be computed on historical cost of the property. Any other basis would be an illusionary and fluctuating standard. The purpose of the annual accruals for depreciation is to replace by money physical property of the company used in the public service, and if additional funds are needed to replace the depreciated physical property with other physical property in order to maintain a going plant, then such additional funds must come by way of additional investment from the owners.

Amounts contributed by customers for construction were excluded from the rate base on the ground that it would be manifestly unfair and discriminatory as to other ratepayers to permit a utility to collect a return from the public on money contributed by others than the owners of the property. It was said that to permit such a return would be to allow the company to collect funds for construction and then to secure from the public a return on the value of that property. In view of the fact, however, that the property constructed by such contributions belongs to the company and the company was charged with the cost of maintenance and replacements, the inclusion of expense of maintenance and depreciation in the operating expenses was allowed.

No allowance was made for franchises and consents in the absence of evidence of cost. As a matter of fact it was said to be common knowledge and a fact of which the commission could take judicial notice that in North Dakota many towns pay the utility to extend its services. As to organization costs it was said that such costs of a corporation merged into another corporation should not be retained on the books of the new company. *Re Central Light & Power Co. (Case No. 3802).* For rulings to the same effect, see *Re Interstate Power Co. (Case No. 3803).*

Approval of Sale Not Required

An application by a gas company to sell and by its affiliated company to purchase certain pipe lines and rights of way no longer useful to the first company, but which would be essential to the second company, was dismissed by the Pennsylvania commission for lack of jurisdiction, without prejudice. The sale did not involve the transfer of any consumers and there were no protests.

The commission expressed the view that no certificate of public convenience under § 202(e) of the Public Utility Law was required for the transfer of such property, not involving a transfer of patrons. Moreover, it was ruled that since this was a single or isolated transaction covering the purchase or sale of fixed assets in which the monetary value of the consideration did not exceed one per cent of undepreciated book value, and not involving more than $50,000, the agreement between the companies did not require approval under the statute relating to approval of agreements between affiliates. *Re Allegany Gas Co. (Application Docket No. 59779).*

The commission in another case made a similar ruling on the lack of necessity for approval of a property transfer by a development corporation which was not a public utility, where the property would for the first time be used by a public utility acquiring it. In this case, however, the consideration exceeded the $50,000 exemption and the commission, under the circumstances, approved the agreement for the sale. *Re North Penn Gas Co. (Application Docket No. 59780).*

Removal of Electric Meter for Testing with Test Jack Disapproved

A PETITION by a municipal plant for reconsideration of an application for approval of a watt-hour meter was denied by the New York commission and the action previously taken was confirmed. Specifically the request for reconsideration was to secure approval of the use of a type of watt-hour meter which required the removal of the meter from a socket or receptacle prior to test operations for the purpose of inserting a testing facility commonly called a test jack.

Various arguments in favor of the installation of a meter without built-in testing facilities were advanced, including the cost item. The commission, however, was not impressed with these arguments.

The commission requires that "meters in service shall be tested where installed on the consumers' premises and under local operation conditions." This requirement, it was held, refers specifically to "as found" tests. It was the opinion of the commission that an "S" type meter is not tested in its "as found" condition if it must be removed from its socket in order to make a test. The possibility that the accuracy of a meter might be affected by its removal from the socket, in the opinion of the commission, had not been conclusively disproved and the advantages that may be associated exclusively with socket type meters used with a test jack did not appear to be of sufficient import to warrant loss of assurance that would probably follow its general adoption. The commission said in part:

> In instances of complaints regarding meter accuracies of meters which necessitate tests on the premises of the consumer, all doubt must be dispelled as to whether the test results reflect the performance of the meter, with its position undisturbed. For this reason the use of the test jack in making complaint and referee tests is not desirable.

It had been pointed out by testimony and in a brief of the Westinghouse Company that the "S" type meters may be tested in place without inherent facilities being contained in the meter, by making connections at the service head and customer's wiring. The commission said that although this method may be feasible under certain conditions, it does not appear to be entirely practicable or desirable since it is more hazardous for the meter tester and more costly from an operating standpoint.

The petition for reconsideration was made by a village but Chairman Maltbie of the commission brought out the fact that counsel was being paid by the Westinghouse Company, which had sold large numbers of meters of the type involved to municipalities. Inspection, by

engineers of the commission, of the meter facilities of the various municipal plants had shown that socket type meters without testing facilities were in actual use in violation of the commission's orders. The power bureau of the commission has so informed the utilities involved, requiring that the meters either be removed or that suitable testing facilities be provided. The Municipal Electric Utility Association, representing various villages of the state, was granted a request to appear and it presented witnesses in its behalf. *Re Village of Westfield (Case No. 279).*

Intrastate Telephone Company Subject to National Board in View of Interstate Connection

THE circuit court of appeals, eighth circuit, held that a telephone company engaged in operating a number of local exchanges in Missouri and transmitting interstate messages over connecting lines to those of an interstate carrier was subject to the jurisdiction of the National Labor Relations Board as an instrumentality of interstate commerce. Interstate messages originating or received over the company's lines amounted to a relatively small percentage of the total messages transmitted in any one year. The revenue from this source, while substantial, was but a small portion of the company's gross operating revenue each year. The court sustained a finding by the board and granted a petition for the enforcement of an order against the company.

The contention was made by the company that as a matter of law the board erred in concluding that the company was subject to its jurisdiction. It conceded that a company itself engaged in interstate telephonic communication is an instrumentality of interstate commerce. It urged, however, that it was not itself an interstate carrier and that its activities were not, therefore, subject to the regulatory power of the Federal government. The argument was said to be that a local company engaged mainly in the transmission of intrastate communication over lines lying wholly within the limits of one state cannot be held an instrument of interstate commerce by the mere fact that it effects the transmission of interstate messages to and from points served by it by connecting its lines to those of an interstate carrier. The court said these contentions had clearly been foreclosed by decisions of the Supreme Court and by at least one decision of the circuit.

The further point was urged that the evidence failed to show, and the board had failed to find, that the company's facilities were used by business concerns; that is, that any communications "of a business nature" were included in the service which it furnished. The inference sought to be drawn was that the proof and the findings failed to establish that the company was engaged in interstate commerce. The court did not consider it necessary to prove or to find particularly that some of the messages carried interstate were orders for the shipment of merchandise from one state into another or that some messages were concerned with particular business transactions. As a public utility it was bound to transmit messages of every or any description offered by the public, including communications of a business nature. *National Labor Relations Board v. Central Missouri Telephone Co. 115 F(2d) 563.*

Approval of Verbal Lease Denied

THE New York commission refused to approve a lease of a substation by one utility company to another where it was based upon a verbal agreement and

there was uncertainty as to some of the terms. The commission observed that if a memorandum of an oral agreement for the interchange of power between utilities, setting forth the terms thereof, could be filed with the commission, it was possible to reduce this agreement for a lease to a memorandum and file the same with the commission so that the commission might have definite information as to the terms and conditions. Even this, however, would not remove an objection that there was no term within which the agreement might expire. The arrangement appeared to be one for indefinite continuation without limit.

The New York statutes provide that a contract for the leasing for a longer period than one year of any real property, or any interest therein, is void unless the contract, or some note or memorandum thereof, is in writing and signed by the lessor or grantor. A verbal lease for less than one year is, however, legal and enforceable. This lease appeared to be one from month to month, which might continue by agreement of the parties, but the commission expressed the view that while the agreement might be legal and binding, it raised several questions which must be considered by the commission in passing upon its approval.

It was not clear as to who was to pay the costs and expenses of maintaining and operating the substation. Other matters such as liability for tax payments were also indefinite. The commission said that it was of importance that it should know definitely what it was approving and how long the lease would continue. *Re New York Power & Light Corp. (Case No. 9533).*

Boiler Plant Leases and Cost Guaranties Of Steam Company

THE New York commission, after investigating the operations of a company furnishing steam service in New York city, found no serious objection to the company's present practices in the leasing of private plants belonging to, or under the control of, its customers, nor to the terms and conditions and limitations set by the corporation for such leasing, provided that reasonably equal treatment should be given to all customers similarly situated. Discrimination was found to exist, however, in the leasing of one of these plants where the utility company had sustained a substantial loss under the lease.

It appeared desirable, however, that the steam corporation should make the lease form and the terms and conditions under which it would lease private plants a part of the general provisions of its rate schedule. It also appeared desirable that the annual report form for steam corporations should be amplified by a requirement for such corporations to furnish a list of the actual maximum demands experienced during the preceding year and equated to 0 degrees Fahrenheit at the premises in or at which private plants are under lease.

The leases provided in substance for company operation of these leased plants in emergency—when the temperature should fall below certain specified degrees. Most of the emergency service would be only for the premises on which the leased plant was located, but in some cases there would also be "send out" service by connection with the company's mains.

A rider used by the steam utility for "limited trial service" was condemned as discriminatory. This rider was described as follows:

> Rider "A" is used where a guaranty of steam service cost is given and is limited to a period not to exceed twelve consecutive months. The steam corporation guarantees "that the total payments for steam during the specified period shall not exceed" the amount specified in the rider, except that when "the charges for the quantities of steam actually used, at the rates in the agreement for service to which this rider is attached" exceed 130 per cent of the amount specified in the rider, then the consumer

pays also the charges in excess of such 130 per cent.

Re New York Steam Corp. (Case No. 9953).

After the first decision in this case proposals were submitted by the steam company pursuant to recommendations by the commission relating to the schedules and leases. These were approved for the most part, but the commission disapproved a proposal to permit the continuance of the guaranty rider until expiration of contracts which had been entered into after the beginning of proceedings before the commission. The commissioners disagreed on this question, but the majority concurred in a memorandum by Chairman Maltbie in which he said that continuance of such discriminatory contracts would be in violation of the Public Service Law, and that if they were illegal they should be terminated immediately or within such reasonable time as might be allowed for the consumers to make other arrangements. *Re New York Steam Corp. (Case No. 9953).*

Municipality Cannot Prevent Operation Of One-man Cars

THE California Supreme Court held that the state railroad commission had controlling authority over local transportation, in a case where an injunction was granted to the Los Angeles Railway Company forbidding enforcement of a city ordinance requiring 2-man crews on street cars.

The company had spent $1,600,000 for one-man cars, as authorized by the commission.

The court declared that regulation of such matters is clearly within the power vested in the railroad commission by the Constitution and the Public Utilities Act. This action by the court upholds the ruling by the superior appellate division on September 12, 1939, which voided the election in May of that year by which the voters rejected one-man car operation. *Los Angeles Railway Co. v. City of Los Angeles.*

Other Important Rulings

THE New Jersey board held that it was without jurisdiction to direct a railroad to construct a bridge and passage over, under, or across a railroad where an avenue crossed the same, so that the public travel on such road should not be impeded. The commission noted that the applicable statute related only to an existing bridge and in this case there was no bridge over the avenue, and also the avenue and the railroad did not cross each other at the same level. *City of Linden v. Baltimore & Ohio Railroad.*

The Missouri commission, in a proceeding relative to abandonment of an agency station, said that it had been its practice to apportion to the station 50 per cent of the total freight revenue, 100 per cent of the revenue derived from ticket sales, milk and cream shipments, and miscellaneous sources, such as storage and demurrage, and the railway company's proportion of express revenues. A comparison of the earnings thus assigned with the expenses indicates that the railroad had not sustained an out-of-pocket loss, but it was observed that the above expenses merely covered the agent's salary and station expenses and did not provide for taxes or for the cost of hauling freight, etc. *Public Service Commission v. Missouri-Kansas-Texas Railroad Co. (Case No. 9952).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 36 PUR(NS) NUMBER 4

Points of Special Interest

SUBJECT	PAGE
Hand-set telephone charges	193
Refund orders in rate cases	193
Service connection charges	193
Federal Commission accounting requirements	202
Adjustment of power company accounts	202
Holding company acquisition of securities	220
Sinking-fund provision for bond issue	224
Bonds with optional redemption clause	224
Valuation of telephone company property	231
Powers of legislature over refunds	245
Commission approval of contracts with affiliates	251

Titles and Index

TITLES

Bell Teleph. Co. v. Driscoll ..... (Pa.Ct.Com.Pleas) 251
Boston Edison Co., Re ..... (Mass.) 224
Crawford v. Corporation Commission ..... (Okla.Sup.Ct.) 245
Middle States Utilities Co., Re ..... (Mo.) 231
Northwestern Electric Co., Re ..... (Fed.P.C.) 202
Washington Gas & E. Co., Re ..... (S.E.C.) 220
Wisconsin Teleph Co., Re ..... (Wis.) 193

INDEX

Accounting—authority of Federal Power Commission, 202; reaccounting for past expenditures, 202.

Commissions—action as body, 245; delegated powers, 251; jurisdiction and powers, 193.

Depreciation—straight-line method, 231.

Intercorporate relations—approval of contracts, 251; holding companies, 220; security acquisition, 220.

Interstate commerce—scope of Federal Power Act, 202.

Procedure—hearing, 202.

Rates—attraction of business, 231; Commission powers, 193; connection charges, 193; hand-set telephone charges, 193; refund of excess charges, 193; rescission of orders, 193; unit for rate making, 231.

Reparation—Commission powers, 193; powers of legislature, 245; refund order in rate case, 193.

Return—telephone company, 231.

Security issues—call premiums, 224; sinking-fund provision, 224.

Statutes—amendment, 245; sufficiency of title, 245.

Valuation — evidence, 231; excess property, 231.

Re Wisconsin Telephone Company

[2-U-35, 2-U-1383.]

Louis Podell et al.

v.

Wisconsin Telephone Company

[2-U-280.]

Rates, § 651 — Orders — Rescission — Failure of findings upon appeal — Hand-set telephone charges.

1. An order eliminating a monthly hand-set telephone charge, based not only on a finding that the charge exceeds the cost of providing and maintaining hand sets, but also upon a finding that the company's intrastate return is excessive, should be rescinded for want of support of the findings and grounds upon which it was based when, on appeal from a rate order, the court holds that the intrastate return under existing rates is not excessive, p. 196.

Rates, § 652 — Effectiveness of order — Rescission — New order — Rehearing.

2. The rescission of a rate order, after the granting of a rehearing which is not concluded, and the entry of a new rate order for the future have the same legal effect as would have an affirmation of the first rate order, since in neither case does the order become effective before the effective date of an order entered after rehearing; such order cannot be made effective retroactively, p. 196.

Reparation, § 12 — Power of Commission — Refund under order for stay — Rescission of rate order.

3. The Commission, after rescinding an order to discontinue monthly charges for hand-set telephones, has no power to require a refund of an accumulated reserve representing the amount of such charges collected even though a stay of the order had been granted on condition that such reserve be accumulated subject to order of the Commission for the making of refunds in the event that after rehearing the discontinuance order should be affirmed, p. 196.

Rates, § 39 — Powers of Commission — Consent of utility — Condition as to stay — Refund of excess charges.

4. The Commission cannot, even with the consent of the utility, impose in an order to stay proceedings a condition that hand-set charges, collected after the entry of an order requiring their discontinuance, be refunded, where the discontinuance order cannot be effective because an application for a rehearing has not been disposed of, p. 196.

Commissions, § 17 — Jurisdiction and powers — Statutory restrictions.

5. The jurisdiction and power of the Commission are purely statutory, so that any particular power must be found within the statutes to make the exercise of it by the Commission valid, p. 196.

Rates, § 86 — Powers of Commission — Retroactive orders.

6. The Commission has no power to make retroactive rate orders, p. 196.

Discrimination, § 23 — Refund of lawful charges — Rebate.

7. A public utility cannot make a lawful refund to its customers of money lawfully received in payment of legal rates, as this would not be a refund but a rebate, p. 196.

Reparation, § 45 — Refund order in rate case — Interpretation.

8. Reference in an order staying a rate order to an order which might later be made by the Commission for the making of refunds must be considered as being a reference to a lawful order of the Commission and not to an attempt on the part of the Commission to exceed its lawful powers, and therefore the company, by accepting such order, does not submit to a jurisdiction which the Commission does not have, p. 196.

Commissions, § 13 — Jurisdiction — Consent or estoppel.

9. Jurisdiction cannot be conferred upon the Commission either by consent or by estoppel of the parties before the Commission, p. 196.

Rates, § 558 — Telephones — Hand-set charge.

10. A monthly hand-set telephone charge in excess of the special costs involved in supplying and maintaining hand-set instruments for standard service is excessive and unreasonable per se as well as unjustly discriminatory as between the telephone company's subscribers, p. 198.

Rates, § 309 — Connection charges — Telephone.

11. Part of the cost of connecting additional subscribers may equitably be included in exchange telephone rates which all subscribers pay, since long-period users receive some benefit from the connection of additional subscribers, p. 198.

Rates, § 309 — Connection charges — Refund — Telephone.

12. A refundable service connection charge by a telephone company is objectionable, p. 198.

Rates, § 309 — Service connection charges — Telephones.

13. A properly designed schedule of nonrefundable service connection charges by a telephone company equitably allocates a portion of the costs of connecting and disconnecting service to those subscribers for whom such costs are specifically incurred, p. 198.

Rates, § 309 — Connection charges — Telephone — Size of exchange — Class of service.

14. Graduation of service connection charges of a telephone company in accordance with the size of the exchanges and class of service is desirable, since it gives recognition to the value of the service and the ability to pay, p. 200.

(NIXON, Commissioner, dissents.)

[November 28, 1940.]

RE WISCONSIN TELEPHONE CO.

INVESTIGATION *of telephone rates with particular consideration of hand-set telephone charges and service connection charges; prior order rescinded, monthly hand-set charge ordered discontinued, and nonrefundable service connection charges ordered in place of refundable service connection charges. See 26 PUR(NS) 209.*

By the COMMISSION: On October 28, 1938, the Commission issued its order in dockets 2–U–35 and 2–U–280, 26 PUR(NS) 209, directing "that effective the first billing date following this order the Wisconsin Telephone Company shall withdraw and discontinue its present monthly charge of 8 cents for hand-set instruments." Seasonably filed on November 16, 1938, was an application for rehearing.

Filed simultaneously with such application for rehearing in the hand-set matter was the petition of the Wisconsin Telephone Company for a revision and increase of its service connection charges and private branch exchange service rates as set forth in its petition.

By order of December 2, 1938, the Commission granted the rehearing requested in dockets 2–U–35 and 2–U–280. Subsequently on December 16, 1938, the Commission issued its order staying the proceedings in the hand-set matter in the following words:

"Now, therefore, it is *ordered*, that all proceedings in the above-entitled matter be and the same are hereby stayed until the final determination of the supreme court of the state of Wisconsin in Cases Nos. 67, 68, and 69 of the August term, 1938, on condition that the Wisconsin Telephone Company shall, from the date of this supplementary order and until final disposition of these proceedings by this Commission, or until such earlier date as may be hereafter provided by the Commission, set up on its books and report monthly to the Commission a reserve account in an amount not less than the sums paid by its subscribers as the additional monthly charge of 8 cents for hand-set instruments, which reserve account so set up shall be regarded and dealt with by the company as being subject to the order of this Commission for the making of refunds by the company to its several subscribers in the event that after rehearing before this Commission the above-mentioned opinion and order of October 28, 1938, be affirmed in whole or in part, and is not vacated and set aside in an action brought for that purpose.

"As a further condition of this stay of proceedings the company shall, within five days of the date hereof, signify to this Commission in writing, by its duly authorized representatives, that it agrees to the condition hereinbefore set forth."

By letter of December 19, 1938, the respondent, Wisconsin Telephone Company, accepted the terms of the order of December 16, 1938. The application in the service connection charge matter, 2–U–1383, was filed for the purpose of securing additional revenues to offset the loss of revenue

which would be suffered by the elimination of the hand-set charge should the elimination of the hand-set charge be affirmed. The hand-set matter having been stayed, no occasion arose for the hearing or determination of the service connection matter.

On July 18, 1940, the utility filed its motion to reopen the proceedings in the service connection matter, 2–U–1383, substituting a proposal attached thereto in lieu of the proposal of November 15, 1938, and requested that because of the intimate relation of the hand-set matter and the service connection charges, the rehearing proceedings of the hand-set matter be consolidated with and made a part of the proposal as to the service connection charges.

Hearing: September 4, 1940, at Madison before Commissioner W. F. Whitney and Examiner W. A. Anderson.

APPEARANCES: Baxter Milne, General Attorney, Milwaukee, for the Wisconsin Telephone Company; Werner Wilking, Assistant City Attorney, Milwaukee, for the city of Milwaukee; Asel R. Colbert, Chief, Accounts and Finance Department, Henry J. O'Leary, Acting Chief, Rates and Research Department, and Philip H. Porter, Chief Counsel, of the Commission staff.

[1] The complaint in docket 2–U–280 related only to hand-set charges in Milwaukee. A notice of July 29, 1931, in docket 2–U–35, PUR1931E 135, directed that an investigation and inquiry be instituted into the rates, tolls, rules, service, practices, and activities of the Wisconsin Telephone Company. Subsequently on May 9, 1933, an order in the same docket directed the company to show cause why the additional monthly charge for hand-set equipment should not be eliminated from the company's rate schedule. Thus the investigation as to hand-set charges in Milwaukee was expanded to include hand-set charges elsewhere in the state.

The company contended throughout the case that the hand-set charge could not reasonably be ordered discontinued because of the inadequacy of its over-all return from intrastate rates and charges. Our order of October 28, 1938, was predicated not only upon the fact that the hand-set charge exceeded the additional cost of providing and maintaining hand sets but also upon our finding in docket 2–U–35 that the over-all return of the company from its intrastate operations was excessive. The order provided:

"The loss of revenue incurred by the elimination of the hand-set charge may be equitably offset against the reduction ordered in docket 2–U–35 and will be so treated in the final adjustment of rates therein prescribed if that order is sustained." (26 PUR(NS) at p. 214.) The supreme court of Wisconsin (1939) 232 Wis 274, 30 PUR(NS) 65, 287 NW 122, however, on appeal from the order in docket 2–U–35 held that the over-all intrastate return of the company under its then existing rates (which included the revenues from the additional hand-set charge) was not excessive. Consequently our order of October 28, 1938, has failed for want of support of the findings and grounds upon which it was based and should accordingly be rescinded.

[2–9] So far as the disposition of

the reserve accumulated pursuant to the order of December 16, 1938, is concerned, the rescission of the order of October 28, 1938, and the entry of a new order for the future have precisely the same legal effect as would have an affirmation of the order of October 28, 1938. In neither case does the order requiring a discontinuance of the hand-set charge, whether it be the order of October 28, 1938, or a new order, become effective before the effective date of the order now being entered after rehearing. Such order cannot be made effective retroactively. We have, therefore, no legal power to require a refund of the accumulated reserve.

Apparently the Commission in entering the order of December 16, 1938, attempted to exercise a power somewhat of the same nature as that exercised by courts in requiring a utility to set up a reserve fund for the purpose of making restitution to subscribers in the event that a rate order under attack by the utility shall eventually be found to be valid. Such a condition was imposed by Federal and state courts as a condition to the granting of injunctions and staying the effect of the Commission's various orders in docket 2–U–35. Such conditions were appropriate and lawful because, had the Commission's orders been upheld by the courts as valid, they would have become effective as of their prescribed effective date. But no such condition can be imposed by the Commission even with the consent of the utility because by statute the Commission's order cannot become effective until after a rehearing has been denied or concluded.

Section 196.405(5), Stat., provides that "the legislative powers of the state, in so far as they are involved in the issuance of orders and decisions by the Commission, have not been completely exercised until the Commission has acted upon an application for rehearing. . . ." And § 196.405(3) provides in part that "No order of the Commission shall become effective while an application for a rehearing or a rehearing shall be pending. . . ."

It is familiar law that the jurisdiction and power of the Commission are purely statutory, so that any particular power must be found within the statutes to make the exercise of it by the Commission valid. Monroe v. Railroad Commission, 170 Wis 180, PUR1920A 721, 174 NW 450, 9 ALR 1007. It is settled law also that the Commission cannot make retroactive rate orders. Milwaukee v. West Allis (1935) 217 Wis 614, 620, 258 NW 851, 259 NW 724.

Any attempt of the Commission to direct a refund to the company's customers of the additional hand-set charges accumulated since October 28 or December 16, 1938, would operate to make the final order in this proceeding effective as of one or the other of those dates. The utility could not make a lawful refund to its customers of money lawfully received in payment of legal rates. Such would not be a refund but a rebate. Any lawful refund of accumulated hand-set charges would necessarily be predicated upon the fact that the utility had received money from its customers in excess of its filed, legal rates. But the legal rate of the utility still includes the additional charge for hand-set instruments, unless the order upon re-

hearing about to be made is made effective as of an earlier date. Under the provisions of the statute expressly providing that the order of October 28, 1938, shall not be effective during the pendency of a rehearing, the Commission cannot make an order now which will be effective as of the date of any previous order in the proceeding.

The situation is not changed by the terms and conditions of the order of December 16, 1938, and the assent of the company thereto. The reference therein to an order which might thereafter be made by the Commission "for the making of refunds by the company to its several subscribers" must be considered as being a reference to a lawful order of the Commission and not to an attempt on the part of the Commission to exceed its lawful powers. There has been, therefore, no submission by the company to a jurisdiction which the Commission did not have. But even if it did agree to submit to such a purported order, jurisdiction cannot be created either by consent or by estoppel of the parties before the Commission. If it were desired and intended to effect elimination of the hand-set charge as of some date in 1938, the Commission should at that time have disposed of the rehearing either by denying it or by promptly holding it and issuing its order thereon. Had it done so, the hand-set charge might have been eliminated at that time, but the service connection charge would have been concurrently reviewed and the company thereby in turn might have enjoyed, as it anticipated, revenues offsetting, partially at least, the loss of hand-set charges.

[10] Although the company's net earnings have not improved since the 1938 orders, a new order for the future can now be made if justified by facts independent of the over-all revenues of the company. We are of the opinion that such facts exist. The hand set has now become essentially a standard instrument which should be supplied at standard rates. An order for the future based upon new findings independent of and divorced from the question of the over-all return of the company should therefore be entered. The 8-cent monthly charge being in excess of the special costs involved in supplying and maintaining hand-set instruments for standard service, is excessive and unreasonable per se as well as unjustly discriminatory as between the company's subscribers.

Service Connection Charges

[11–13] The utility now has in effect a service connection charge of $3.50 refundable at the expiration of two years' continuous service at the same exchange. In addition, there is in effect an optional schedule of service connection charges applicable only to extension stations. The optional schedule of nonrefundable charges ranges from $2 for a business extension station to $1 for a residence extension station.

At the hearing of September 4, 1940, the respondent moved that its proposal as to private branch exchange charges be held in abeyance. This opinion and order, therefore, relate only to the service connection charges of the petition in 2–U–1383.

First experience of Wisconsin telephone subscribers with service connec-

tion charges was had during the period of the World War when the Wisconsin Telephone Company was operated under the control of the United States government. The present refundable service connection charge was established by order of the Railroad Commission on March 5, 1920.

The primary purpose of a service connection charge is to collect from customers who occasion the expense of connections and subsequent disconnections some of the costs incurred by such movements. By this means, long-term customers who do not impose a burden of expense on the utility for connection and disconnection are in part relieved of payment in their exchange rates for such costs incurred in connecting and disconnecting relatively short period users. Were short period users required to pay the entire allocated cost of connection and disconnection, the charges would be so high that telephone development would be retarded. Long-period users receive some benefit from the connection of additional subscribers and it appears equitable therefore to include part of the cost of connecting these additional subscribers in the exchange rates which all subscribers pay.

The present refundable service connection charges were designed to require short-term users to pay a relatively large portion of the connection and disconnection costs, resulting in the relief to other subscribers of the payment of such costs in their monthly rates. In practice, however, it has been demonstrated that the refundable service connection charge has not accomplished the purpose for which it was designed. Other objectionable features have developed.

Subscribers who use service for periods of less than two years create the greatest burden of expense. By the forfeiture of their refunds they contribute in part to defraying such expense. On the other hand, those subscribers who use service for relatively short periods in excess of two years cause expense and (their service connection charges having been refunded) they contribute nothing by way of the special charges to cover such expenses. Therefore, unless proper provision is made for a reasonable charge against the subscribers who are responsible for the additional expense, long-term users will be required to pay more than their fair share of such costs in the monthly exchange rates.

It has been the Commission's experience, furthermore, that the refundable service connection charge is unsatisfactory from an administrative point of view. Such charges have been confused by subscribers with the nonrefundable move and change-in-type of instrument charges. Because of its requirement, subscribers have regarded it as equivalent of a deposit to be used as a guaranty of the payment of bills. Frequent station movements of stations in private branch exchange systems make it difficult to keep records of installations for the purpose of refunds. Detailed accounting records and the administrative procedure required to insure accuracy in administering refunds consume a substantial portion of the revenue received from such charges and the purposes of the service connection charges are largely nullified.

Some of the principal items of cost involved in the establishment of service to a subscriber are: (1) Commer-

cial and administrative expenses with respect to contractual relationships, service orders, directory compilation, information service, and accounting records; and (2) Plant department expenses associated with the connection or installation of telephones, maintenance of service records and central office expense involved in the arrangement of wiring, cable connections, and marking of the switchboard. Greater expense is incurred in disconnection of service than in connection of service. The same expenses as above noted for connection are present in disconnection and in addition there is a considerable loss in the cost of material and labor incurred in connection with the service on subscribers' premises.

But for the fact that the greater portion of the total cost of connection and disconnection is incurred at the time service is terminated, it would not be seriously discriminatory to absorb such costs in the monthly rates. But it has been found impracticable to require term contracts to absorb these costs with payment of disconnection costs if service is terminated before the expiration of the contract period. The application of a properly designed schedule of nonrefundable service connection charges appears to be a more equitable method of allocating a portion of the costs of connecting and disconnecting service to those subscribers for whom such costs are specifically incurred, and thus relieve other subscribers of payment of such costs in their monthly exchange rates.

Respondent's witness testified that a recent study for 1940 of all exchanges disclosed that the average direct noncapitalized cost was $2.05 excluding wiring losses, and $7.56 including wiring losses per installation and discontinuance of installation. That study emphasizes that commercially it is impracticable to attempt to collect the full cost from each subscriber when application for service is made. These figures are supported by our records.

As an indication of the importance of connection and disconnection service, Exhibit 6 shows the following:

Year	Gross Connections	Disconnections	Net Station Gain	Gross Stations Connected per Station Gained
1935	68,183	57,715	10,468	6.51
1936	76,958	59,333	17,625	4.37
1937	78,788	61,727	17,061	4.62
1938	71,813	65,649	6,164	11.65
1939	75,456	63,269	12,187	6.19
Total 5 years	371,198	307,693	63,505	5.85
1st six months (1940)	38,337	31,670	6,667	5.75

In addition for the 5-year period from 1935 to 1939, inclusive, the respondent made an average of 10.69 disconnections and connections for each station gained.

[14] The refundable service connection charge of the respondent is $3.50 and the same charge is made for a nonrefundable outside move. The company's proposal graduates the charges in accordance with the size of the exchanges and class of service. This appears to be a desirable feature since it gives recognition to the value of the service and the ability to pay,

which vary with the size of the exchange and the class of service. Other investigations which have been made from time to time disclose that costs are higher in the larger exchanges, presumably because of higher wage rates.

The respondent's proposed schedule also includes service connection charges for left-in stations. There is at present no charge made when a subscriber is able to secure service by means of an instrument which has not been removed from the premises when the previous subscriber terminated service at that location.

When a subscriber takes advantage of a left-in station it does not relieve the company of many of the expenses previously discussed, particularly those relating to contractual relationships, service orders, directory compilation, information service, accounting and service records, rearrangement of central office equipment, switchboard marking, etc. In other words, even when advantage is taken of left-in stations, the company is not relieved of making additional expenditures.

The present charge for inside movements and change-in-type of instrument is $2 which is not refundable. The company's proposal is that such charges would be applied as maxima for inside moves or changes in type of instrument. Thus, where the service connection charge other than the "in place" charge is less than $2, it will apply to an inside move or a change in type of instrument in lieu of the $2 charge.

The company's proposed charges are classified in accordance with the size of the exchange. We conclude after reviewing the methods used in making the classification that Oshkosh should be removed from its present classification and placed in the next lower group of exchanges which includes Appleton and Beloit. This transfer will result, in only a negligible reduction in the proposed increase in revenues.

The utility estimates on the basis of a study of recent station movements that the application of the proposed schedule will result in an increase in revenue of $75,600 a year. It also estimates that the discontinuance of the present charge for hand sets will result in an annual loss of revenue of $162,000. The net savings to the public under the elimination of the hand-set charge and the establishment of the service connection charges will therefore be about $86,000 a year, and these savings will be enhanced as the use of hand-set instruments increases.

Findings

The Commission finds:

1. That its order of October 28, 1938, 26 PUR(NS) 209, and its order of December 16, 1938, should be rescinded.

2. That the present 8-cent additional charge for hand-set instruments is and for the future will be inherently unreasonable and unjustly discriminatory.

3. That the present refundable service connection charges are unreasonable and discriminatory and that reasonable and nondiscriminatory service connection charges are those hereafter prescribed.

ORDER

It is therefore *ordered:*

1. That our orders in 2–U–35 and 2–U–280 dated October 28, 1938, and December 16, 1938, as they relate to the charges for hand-set instruments be and hereby are rescinded.

2. That effective on and after the first billing date following December 31, 1940, the Wisconsin Telephone Company shall withdraw and discontinue applying its present monthly charge of 8 cents for hand-set instruments.

3. That effective January 1, 1941, the company makes effective the following schedule of nonrefundable service connection charges:

	Business		Residence		Business and Residence
	Main Sta. & P.B.X. Trunk	Extension & P.B.X. Station	Main Sta. & P.B.X. Trunk	Extension & P.B.X. Station	In Place Charge[3]
Milwaukee	$3.50	$2.00	$2.50	$1.00	$1.25
3 exchanges[1]	3.00	1.75	2.00	1.00	1.25
13 exchanges[2]	2.75	1.50	1.75	1.00	1.00
All other exchanges	2.50	1.25	1.50	1.00	1.00
Outside moves	Become service connections at above rates				

[1] 3 Exchanges are:
Green Bay
Madison
Racine

[2] 13 Exchanges are:
Appleton
Beloit
Eau Claire
Fond du Lac
Hurley
Janesville
Kenosha
Manitowoc
Neenah-Menasha
Oshkosh
Sheboygan
Superior
Waukesha

[3] For the transfer or reconnection of all or a part of service and equipment at one premises at same time, instruments are considered as being in place only when no change is made at the subscriber's request in either (1) the type or location of the instrument, or (2) the wiring or equipment on the subscriber's premises.

No charge for transfer of service or equipment involving only a change in name without change in interest, or a change in interest without change of name.

4. That service connection charges paid prior to January 1, 1941, shall be handled and disposed of according to the conditions, rules, and regulations in effect as of the date of their payment.

5. That the application of November 16, 1938, for a revision of rates for private branch exchange service be and hereby is dismissed without prejudice.

NIXON, Commissioner, dissenting: I dissent from that portion of this decision that rescinds the order of the Commission dated October 28, 1938.

FEDERAL POWER COMMISSION

Re Northwestern Electric Company

[Opinion No. 56, Docket No. IT-5642.]

Interstate commerce, § 34.1 — Scope of Federal Power Act — Public utilities.

1. A company owning and operating facilities used for the transmission of

electric energy in interstate commerce and selling electric energy at wholesale in interstate commerce is a public utility within the meaning of that term as used in Parts II and III of the Federal Power Act, p. 206.

Accounting, § 3 — Authority of Federal Power Commission.

2. The Federal Power Commission has authority to require a public utility which is subject to regulation under the Federal Power Act to keep general corporate and other fundamental accounts and records covering its entire electric utility business in conformance with the provisions of the Commission's system of accounts, p. 206.

Accounting, § 56 — Reclassification — Federal Commission requirements — Reaccounting.

3. The reclassification required by Electric Plant Instruction 2–D, promulgated by the Federal Power Commission, permits only a reclassification of cost as recorded on the books of the company and does not permit a reaccounting of past expenditures, p. 207.

Accounting, § 56 — Reaccounting for past expenditures — Interest during construction.

4. Reaccounting by a power company for interest during construction by adding as a part of cost of plant an amount which might have been allowed for interest during construction originally, but which, in the exercise of a deliberate policy, the company did not at the time charge to capital, does violence to the intent and purpose of the Federal Power Commission's system of accounts and is directly contrary to sound regulatory procedure, p. 207.

Accounting, § 56 — Reaccounting for expenditures — Items charged to expense.

5. A public utility company which has exercised allowable discretion in charging administrative and general expenses to operating expenses is bound by the plant cost resulting therefrom, a later attempt to add such items to plant cost violates the Federal Power Commission's system of accounts, fails to conform to sound principles of accounting, and vitiates the principles of equity in relation to its consumers, p. 207.

Accounting, § 56 — Common stock items — Write-up of plant account.

6. An amount representing a write-up of plant account of a federally licensed power company equal to and associated with the amount of common stock outstanding, which stock was issued without value having been received, should not be included in the account for electric plant in service, p. 213.

Accounting, § 40 — Working capital — Estimated carrying charges.

7. Estimated carrying charges on working capital should not be capitalized, p. 215.

Accounting, § 44 — Jointly used property.

8. The cost of all production and general facilities of a power company used jointly by steam heating and electric departments should not be placed in the account for electric plant in service, but a proportionate amount should be transferred to the detailed plant accounts for other common utility plant, p. 216.

Accounting, § 31 — Plant held for future use.

9. Equipment in a substation which is not in service but is held for future

use is properly transferred from the station equipment account to the account for electric plant held for future use, p. 216.

Procedure, § 26 — Hearing — Accounting items.

10. A federally licensed power company cannot complain that it did not receive a fair hearing as to the disposition of accounting items merely because it did not choose to submit evidence, offer a plan of disposition, or argue the cause at a hearing when every opportunity was given the company to submit evidence, to cross-examine the Commission's witnesses, and to present argument on the subject, p. 217.

Accounting, § 21 — Stock selling expense.

11. Preferred stock selling expense of a federally licensed power company is properly includible in the capital stock expense account, p. 218.

[December 6, 1940.]

ORDER *to show cause why Commission should not find and determine by order that adjusting entries be made to bring books of account of federally licensed power company in conformity with joint report of Commission's staff in coöperation with staff of Public Utilities Commissioner of Oregon; adjusting entries ordered.*

APPEARANCES: Laing & Gray, by John A. Laing, and Henry S. Gray, and Reid & Priest, by A. J. G. Priest and Sidman I. Barber, for Northwestern Electric Company; Alvin A. Kurtz, General Counsel, for Public Utilities Commissioner of Oregon; Harry A. Bowen, Examiner, for Washington Department of Public Service; Richard J. Connor, Assistant General Counsel, George Slaff, and Milford Springer, for the Federal Power Commission.

By the COMMISSION: This proceeding arises under § 301(a) of the Federal Power Act, 16 USCA § 825, and relates to the Uniform System of Accounts for Public Utilities and Licensees prescribed by the Federal Power Commission and the accounting entries which the company proposed to enter in its books under certain requirements thereof.

History of the Case

Northwestern Electric Company was incorporated on January 7, 1911, in the state of Washington, and is engaged in interstate and intrastate commerce, producing, transmitting, and distributing electrical energy to retail and wholesale customers in the states of Oregon and Washington. It also operates a central steam heating utility in Portland, Oregon.

The Federal Power Commission, pursuant to the authorization of the Federal Power Act, prescribed a Uniform System of Accounts for Public Utilities and Licensees which became effective on January 1, 1937.

Electric Plant Instruction 2-D of the System of Accounts requires the reclassification of the electric plant of Public Utilities and Licensees as of the effective date thereof and the submission to the Commission by January 1, 1939, of adjusting entries nec-

essary to reflect the reclassification.[1] The Commission entered a supplementary order on May 11, 1937, in which was set forth in considerable detail the information to be submitted in connection with the reclassification studies.

Pursuant to these requirements, Northwestern Electric Company submitted on May 27, 1939, a purported reclassification of its electric plant accounts as of January 1, 1937, including proposed adjusting entries. Under similar requirements of the Public Utilities Commissioner of Oregon, the company filed an identical reclassification study with that Commissioner.

This Commission's staff, in coöperation with the staff of the Public Utilities Commissioner of Oregon, made a field investigation of the company's reclassification study. A joint report on this investigation was prepared and served upon the company with a written request that it adjust its proposed reclassification to conform therewith. This Commission's letter of transmittal, dated May 1, 1940, also contained a request for a plan of disposition of a $3,500,000 common stock item which was transferred in the joint report to Account 107, Electric Plant Adjustments.

The company declined to make the adjustments recommended in the joint report and failed to present a plan for disposing of the $3,500,000 item. On June 18, 1940, the Federal Power Commission ordered the company to show cause, at a public hearing on July 15, 1940, at Portland, Oregon, why the Commission should not find and determine by order that adjusting entries be made to bring the books of account in conformity with the joint report.

Upon request of the company, the date for hearing was postponed to July 22, 1940. On July 5th, the company filed an application for continuance for a period of thirty days, which was denied by the Commission.

On July 17, 1940, the company filed a motion to dismiss the proceedings, which motion was denied. Thereafter, on July 22, 1940, the company filed a voluntary answer to the show-cause order.

The public hearing was held at Portland, Oregon, commencing on July 22, 1940, and concluding on August 1, 1940. The Department of Public Service of Washington and the Public Utilities Commissioner of Oregon petitioned to intervene and the Commission granted these requests. Pursuant to the order to show cause and fixing date for hearing, a joint hearing was held in which the Public Utilities Commissioner of Oregon, the Honorable Ormond R. Bean, participated. The transcript of the proceedings totaled 1,179 pages and 78 exhibits were admitted in evidence. After the hearing, briefs were filed by counsel for the company and the Federal Power Commission.

[1] Electric Plant Instruction 2–D provides: "Not later than two years after the effective date of this system of accounts, each utility shall have completed the studies necessary for reclassifying its electric plant as of the effective date of this system of accounts in accordance with the accounts prescribed herein and it shall submit to the Commission the entries it proposes to make to carry out the provisions of this instruction. It shall submit also a comparative balance sheet showing the accounts and amounts appearing in its books as of the effective date of this system of accounts and the accounts and respective amounts as of the same date after the proposed entries shall have been made."

Jurisdiction of the Federal Power Commission

[1] The facts show, and the company admits, that it owns and operates facilities used for the transmission of electric energy in interstate commerce and that it sells electric energy at wholesale in interstate commerce. It is, therefore, a "public utility" within the meaning of that term as used in Parts II and III of the Federal Power Act.

Authority of the Federal Power Commission Over Public Utility Accounting

[2] The company contends its general corporate and other fundamental accounts and records are not within the purview of § 301(a) of the Federal Power Act, 16 USCA § 825, but, on the contrary, that the state regulatory authorities alone have comprehensive accounting and other supervision over its affairs. It argues that the correct interpretation of §§ 201 (a) and (b) and 207 of the act, 16 USCA §§ 824, 824f, impel such conclusion. With this we are not in accord. The rule of statutory construction that specific provisions must prevail over general provisions is applicable in this instance. Section 301(a) authorizes this Commission to prescribe accounting rules and regulations; requires "every licensee and public utility" to keep its accounts, records, and books in accordance therewith, and provides "that nothing in this act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any state." [2] Carrying out its responsibility under this section, in an earnest effort to make effective the congressional direction to establish uniformity in accounting in the electric field, the Commission has prescribed a Uniform System of Accounts. Obviously, Congress was cognizant of the fact that uniform and comprehensive accounting information is not only desirable but a vital prerequisite to effective regulation of interstate commerce.[3]

The Supreme Court of the United

[2] Section 301(a) of the Federal Power Act, 16 USCA § 825, provides:

"Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* that nothing in this act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any state. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof."

[3] See Senate Report No. 621, p. 53, 74th Cong., 1st Session (1935) See also H. R. Report No. 1318, pp. 30–31, 74th Cong., 1st Session (1935). In the Senate Report it is stated by the committee on interstate commerce:

"Section 301 requires . . . every public utility subject to the act to keep its accounts in the manner prescribed by the Commission; it thus takes a long step in the direction of the uniform accounting which is so essential

States has recognized that it would be impracticable for a Federal agency to limit accounting requirements to the interstate portion of a public utility's business when it is also engaged in intrastate business, thus:

"The object of requiring such accounts to be kept in a uniform way, and to be open to the inspection of the Commission, is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the act, that it may properly regulate such matters as are really within its jurisdiction. Further, the requiring of information concerning a business is not regulation of that business." Interstate Commerce Commission v. Goodrich Transit Co. (1912) 224 US 194, 211, 56 L ed 729, 32 S Ct 436.

The Supreme Court has sustained the Federal Communication Commission's System of Accounts for interstate telephone utilities, which is similar in principle to the Federal Power Commission's System of Accounts for Public Utilities and Licensees. American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 81 L ed 142, 16 PUR(NS) 225, 57 S Ct 170.

In view of the provisions of the Federal Power Act and the decisions of the United States Supreme Court, there can be no doubt about our authority to require the company to keep general corporate and other fundamental accounts and records covering its entire electric utility business in conformance with the provisions of our System of Accounts. Re Northern States Power Co. (Fed PC 1940) 33 PUR(NS) 279.

The Principal Problems

[3–5] There are four principal problems for determination in this proceeding. Briefly stated, they are:

(1) Whether the company may now reaccount for interest during construction and add to cost of plant amounts for interest during construction not previously charged;

(2) Whether the company may now reaccount for the administrative and general expenses previously charged to operating expenses and add a part thereof to its recorded plant cost;

(3) Whether the amount of $3,500,000 or any part thereof may be included in the company's Account 301, Organization;

(4) The disposition of amounts in Account 107, Electric Plant Adjustments.

The first two problems have certain features which are common in principle. It is claimed by the company that the reclassification required by Electric Plant Instruction 2–D of our System of Accounts, is to be derived not by a reclassification of cost as recorded on the books of the company, but rather by a reaccounting of past expenditures.

The reclassification required by Electric Plant Instruction 2–D is just what it purports to be, i. e., a reclassification and not a reaccounting.

The specific situation with respect

in the electric industry. The authority of the Commission over the accounts of companies under its jurisdiction extends to the entire business of such companies, but there is an express provision that nothing in the act shall relieve any company from keeping such accounts as it is required to keep by a state Commission or by any requirement of state law."

to the general and administrative expenses, now sought to be included as a part of cost of plant, is as follows: In the company's purported reclassification it has added to its recorded cost of plant the sum of $408,419.82,[4] representing the amount which it now claims should have been charged to electric plant for administrative and general expenses allocable to construction during the years 1926 to 1936, inclusive. During this period a total of $899,109.84 was actually capitalized currently as administrative and general expenses applicable to electric plant. The amounts making up the total of $408,419.82 were regularly charged to operating expenses during those years.

With respect to interest during construction, the situation is that during the period beginning July 1, 1914, and ending December 31, 1925, the company did not choose to capitalize all the interest during construction that might have been capitalized under the then controlling System of Accounts. It did capitalize interest during construction on certain major construction work done in 1918 and 1919. It has now recomputed interest during construction for the aforementioned period to a total of $31,389.87 [5] and seeks to add this amount to the recorded cost of its utility plant. This computation of interest is based upon the theoretical use of the company's own funds and does not represent identifiable interest costs.

The third problem embraces the $3,500,000 included by the company in Account 301, Organization, in its reclassification report, which is the present par value of the 100,000 shares of common stock issued to the promoters of the enterprise. In the joint report this common stock amount was identified as a write-up of electric plant and transferred to Account 107, Electric Plant Adjustments, where it is subject to disposition as we may approve or direct.

The fourth problem relates to the disposition of the $3,500,000 item, and a preferred stock selling expense item.

The Claimed Addition of Interest During Construction

From 1911, when the company was organized, to July 1, 1914, which was the date when regular operations were begun, the company capitalized interest during construction on all of its construction expenditures. From the commencement of regular operations through 1925 the company did not capitalize interest during construction except in connection with the construction of its Lincoln steam plant. Since 1925 the company has capitalized interest during construction.[6] It is evident that the company exercised a deliberate policy of not charging to capital all the interest during construction that might have been charged during the period 1914–1925; that such choice represented the exercise of proper accounting discretion at that time; that such choice was not an ac-

[4] This amount was originally claimed as $780,922.75 in the company's reclassification report filed with this Commission; subsequently it was reduced to $435,182.38 by Exhibit No. 11, and changed again by the company's witness to $408,419.82.

[5] This amount was originally $34,959.79 in the company's reclassification report, but changed to $31,389.87 by the company's witness.

[6] That is, the company has followed the plan of capitalizing interest on all projects costing more than $1,000 and requiring more than thirty days to construct.

counting error; and that it would be improper to permit the company now to add this item to the recorded cost of its property.

It is not denied that had such interest during construction been recorded as an element of cost at the time it was alleged to have been incurred, no question would now be raised as to its propriety. But this does not negate the principle that accounting records must not be impeached because of a change in the subsequent conception by accounting officials of the company as to what constituted cost for a prior period.

The company contends that inasmuch as the Commission's System of Accounts includes interest during construction as a component of construction cost, the failure to capitalize interest during construction in the past must be deemed to be "an accounting error," regardless of what may have been the policy of the management at the time of the transactions. It cannot be asserted that any "accounting error" was involved in the choice of previous management not to capitalize interest during construction on much of the construction during this period. Such a choice was within the field of managerial discretion. The deliberate choice not to record this allowable component of cost represented the manifestation of the management's considered policy.

The entire history of the company's accounting practices with respect to the interest during construction shows the exercise of discretion by the management under the then controlling Systems of Accounts and the change from time to time in managerial policy. The practice of capitalizing interest on large projects, such as the Lincoln steam plant, but ignoring it on small ones is not at all an unusual one or unique to this company. Although the exercise of a different discretion might have been equally proper, there was nothing wrong in the manner in which the company exercised its discretion with respect to capitalization of interest during construction during the period 1914–1925. There is no "accounting error" to be corrected at this time.

There is no fundamental accounting principle involved in the capitalization of interest on the company's own funds or the policy of noncapitalization of interest in whole or in part. Public accountants have no hesitancy in certifying to financial statements of industrial enterprises or public utilities where, as a matter of accounting or financial policy of management, interest during construction is not capitalized or is capitalized only in part.

The company's attempted reaccounting does not represent any reclassification of the company's accounts. It is an attempt to construct a statement of cost of plant different from the recorded cost because of a change in the attitude of the company as to what should have been charged as cost fifteen to twenty-five years ago.

Despite the fact that Electric Plant Instruction 2–B of the Commission's System of Accounts does not definitely prohibit the restatement of interest during construction in this case as it prohibits the restatement of amounts previously charged to operating expenses, there is nothing in the system which sanctions such recomputation. To permit, at this time, a reaccounting

of costs during the period 1914–1925 (because the company now seeks to change its policy retroactively) would start us on the road to chaos in accounting.

We have carefully considered the evidence offered and the arguments presented by the company. We are of the opinion that the proposed reaccounting for interest during construction not only does violence to the intent and purpose of the Commission's System of Accounts but is directly contrary to sound regulatory procedure. Any other conclusion would permit retroactive accounting for indefinite periods in the past. Today's accounting could be destroyed tomorrow, if such practices are condoned. Accounting carried out within the range of allowable discretion under controlling Systems of Accounts and not in conflict with fundamental accounting principles should have an element of finality so that the regulatory process can function and the public, investors as well as consumers, be adequately protected. If we were to permit the reaccounting proposed by the company in this respect, we would be encouraging instability and frequent shifting in utility accounting. Impeachment of past proper accounting will not be sanctioned and the integrity of accounts must be maintained.

The company seeks to add to recorded cost additional amounts which it had previously decided in the exercise of its allowable discretion were not a part of cost of plant. We find this to be improper and contrary to the reclassification requirements of our System of Accounts.

Additional Administrative and General Expenses Claimed As Cost of Plant

As we have pointed out, the company's attempted reaccounting would add to the recorded cost of plant the sum of $408,419.82, representing additional prorated general and administrative expenses for the years 1926 to 1936, inclusive. The amounts comprising this total were previously charged to operating expenses during this period. Such reaccounting is specifically forbidden by Electric Plant Instruction 2–B of the System of Accounts, which reads:

"It is . . . not intended that adjustments shall be made to record in electric plant accounts amounts previously charged to operating expenses in accordance with the uniform system of accounts in effect at the time or in accordance with the discretion of management as exercised under such Uniform System of Accounts."

It is the contention of the company that either the Commission did not mean what it said in the foregoing instruction or that if such were the intent, the Commission's Uniform System of Accounts in this respect is arbitrary and unreasonable. Under the Systems of Accounts generally in effect in the past for electric utilities, and also under the present system, utility officials have been and are permitted considerable discretion in accounting for certain joint and other costs which cannot clearly be classified as plant costs or operating expenses. This is particularly true as to those items which are subject to proration or allocation. See § 3 of General Instructions and Definitions for Fixed Cap-

ital Accounts of the superseded Uniform Classification of Accounts for Electrical Utilities prescribed by the Public Service Commission of Oregon which became effective January 1, 1925.

It is undisputed that the company exercised its allowable discretion in its past accounting. The company states that its recorded book costs of plant do represent the accounting costs thereof, determined in accordance with what were then currently accepted principles of accounting. It further states that it is satisfied with its present recorded costs. The company admits that there is no difference between the elements of cost as contained in the applicable old and new systems of accounts. The company contends that it should be permitted to recast its plant accounts because of the increased significance of original cost or prudent investment in utility regulation. To achieve this objective, it is willing to impeach its past financial statements submitted to regulatory agencies, taxing authorities, investors, and other persons interested in its affairs. Its officers now wish to exercise anew the discretion properly exercised at the time, as to what constituted an operating or capital expenditure. They wish to exercise their discretion so as to show maximum charges to plant and minimum charges to income long after the income statements have served their purpose. The income account is fully as important as the plant account; under the scheme advocated by the company great doubt would always be cast upon both.

The company claims that the cost of public utility plant is a fact not at all dependent upon any accounting practices. We know that the cost of any utility plant is the resultant of the allowable accounting discretion of the utility as exercised within the limit permitted by the system of accounts, but the utility having exercised such allowable discretion is thereafter bound by the cost resulting therefrom. Many expenditures made by a utility must be assigned, allocated, or prorated on the basis of judgment, to the various plant and operating accounts. The cost of plant is dependent upon those assignments, allocations, and prorations, just as operating expenses are dependent thereon.

The company would impeach its records of the past, although admitting they were kept in accordance with sound principles of accounting, by reassigning, reallocating, and reprorating certain joint costs. It attempts to do so under the erroneous interpretation that this Commission's System of Accounts requires it. Our System of Accounts prohibits rather than requires such reaccounting. To provide otherwise would be to destroy the usefulness of the System of Accounts as a regulatory instrument.

When items are charged to expense in accordance with sound principles and practices of accounting, they should remain in expenses and the Commission will not tolerate their restatement in plant accounts with the natural concomitant of an additional charge to expense as depreciation. If such a restatement as urged by the company in this case were sanctioned, managerial discretion in matters of accounting would have to be wholly circumscribed and precise, detail accounting prescribed for each item.

A recent decision by the Illinois su-

preme court, in the case of Peoples Gas Light & Coke Co. v. Slattery (1939) 373 Ill 31, 31 PUR(NS) 193, 206, 25 NE(2d) 482, exposes the impropriety of that company's similar attempt to capitalize administrative and general expenses which were formerly charged to operating expenses, thus:

"The original cost new, as shown by the company of the other physical property, is $111,330,067.67. There is no opposing proof upon this question. However, included in this amount is the sum of $1,957,753, of items which were charged to operating expenses. Most of the items were part of general expenses originally charged to operation and now allocated to construction. The inclusion of this item in cost of property in our opinion was error.

"The original cost of property for rate-making purposes may not be increased because of a change in the company's policy with respect to charge items as between operation and construction. Knoxville v. Knoxville Water Co. (1909) 212 US 1, 53 L ed 371, 29 S Ct 148. In Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 US 151, 78 L ed 1182, 3 PUR(NS) 337, 54 S Ct 658, where amounts charged to operating expenses and charged to depreciation reserve were too high, the company was not permitted to show, in fact, that part of such expenses went into the capital structure, the court, at p. 348 of 3 PUR(NS), saying: '. . . if the amounts charged to operating expenses and credited to the account for depreciation reserve are excessive, to that extent subscribers for the telephone service are required to provide, in effect, capital contributions, not to make good losses incurred by the utility in the service rendered and thus to keep its investment unimpaired, but to secure additional plant and equipment upon which the utility expects a return.' In Wheeling v. Natural Gas Co. (1934) 115 W Va 149, 5 PUR (NS) 471, 175 SE 339, it is held that where overhead items of physical property were charged to operating expenses, they could not be changed into the capital account for rate-making purposes, because, while such expenses were being so charged, the rates were undoubtedly fixed and based upon their being a part of regular expenses. It seems clear that it is not proper to build up operating expenses and get the advantage of a rate authorized to cover them, and later change the method of accounting to include such excess items as a part of the investment of the company, when, in reality, the money has been furnished by the customers of the company. The original cost, to this extent, was excessive. . . ."

The California Commission has enunciated the correct principle to be applied in this proceeding, in the case entitled Re Los Angeles Gas & E. Corp. PUR1933E 317, 323, as follows:

"The vice of what the company has here sought to do lies in its attempt to give a *retrospective* effect to a change in policy where the relationships established under the superseded policy cannot all be effected consistently, for while capital is thus increased the benefit of lessened operating charges over the years cannot be extended retroactively to the company's consumers.

"What the company has here

sought to accomplish is entirely wanting in equity. If sanctioned, it would cast doubt and uncertainty upon the reliability of utility accounting developed over many years under public supervision. If fixed capital accounts may be thus surcharged now they may be revised again in the future. Ideas of overhead percentages vary widely and vary from time to time. The element of judgment enters into their determination. A variation of but one per cent in the amount of these involves a large amount in the total of fixed capital. Should capital accounts be thus subject to change, energetic and astute valuation and other experts would ever be combing over utility accounts and effecting changes and revisions in the permanent records and fixed capital accounts would become as variable and shifting as the ideas of those in charge. In the complicated processes of regulation, involving not alone the fixation of rates but the supervision of security issues, it is highly important that permanent accounting records maintain a continuity and import a reliability which would not exist if subject to revision and change whenever new faces appeared in positions of influence in the management."

In numerous other cases courts and Commissions have considered it improper for public utilities to capitalize retroactively items which have been charged by election of management to operating expenses in the past.[7] The committee on statistics and accounts of the National Association of Railroad and Utilities Commissioners in its September 20, 1940, "Statement Relating to the Original Cost and Reclassification of Utility Plant Pursuant to the Provisions of Uniform Systems of Accounts," (like our system) is in complete agreement with our conclusions on this subject.

We find that the company's attempt to add to plant costs administrative and general expenses previously assigned to operations, not only violates the Commission's System of Accounts, and fails to conform to sound principles of accounting, but likewise vitiates the principles of equity in relation to its consumers. The claimed additional administrative and general costs are therefore disallowed.

Transfer of $3,500,000 from Account 301, Organization, to Account 107, Electric Plant Adjustments

[6] The Northwestern Electric Company was promoted by two financiers from San Francisco, California, who were interested in a paper mill on the Columbia river east of Portland, Oregon. The promoters desired a water-power site to develop electricity for the paper mill. The company was incorporated on January 7, 1911, and the promoters advanced

[7] Los Angeles Gas & E. Corp. v. California R. Commission, 58 F(2d) 256, 260, PUR 1932C 397, 404; Natural Gas Co. v. Public Service Commission, 95 W Va 557, PUR 1924D 346, 121 SE 716; Plainfield-Union Water Co. v. Public Utility Comrs. 6 NJ Mis R 267, PUR1928C 657, 660, 140 Atl 785, 786; Re Elgin, J. & E. R. Co. (1924) 84 Inters Com Rep 587, 592; Re Potomac Electric Power Co. (DC) PUR1917D 563, 604; Re Central Maine Power Co. (Me) PUR1918C 792, 796; Re Indianapolis Water Co. (Ind) PUR1919A 448, 470; Re Eaton Rapids (Mich) PUR 1922D 94, 103; Re Kootenai Power Co. (Idaho) PUR1924E 831, 833; Re Mondovi Teleph. Co. (Wis) PUR1933B 319, 321; Re Yonkers Electric Light & P. Co. (NY 1934) 6 PUR(NS) 132, 147; Commerce Commission v. Commonwealth Edison Co. (Ill 1936) 15 PUR(NS) 404, 405; Re Hawaiian Electric Co. (Hawaii 1940) 33 PUR(NS) 161, 165.

about $175,000 to their agents to acquire power sites. On May 13, 1912, that money, with 6 per cent interest, was repaid by Northwestern Electric Company to the promoters.

The company decided to enter the utility business in Portland and vicinity to utilize the power developed in excess of the paper mill's requirements. That the two promoters organized and controlled the company is undisputed. On May 14, 1911, the promoters had the board of trustees of Northwestern Electric Company issue 50,000 shares of common stock to them or their nominees. On May 14, 1912, the promoters caused the trustees to increase the capital stock from 50,000 shares of $100 par value to 100,000 shares of that par value, and to issue the additional shares to them or their nominees. The issue of the common stock was a disguised gift by the promoters to themselves.

This $10,000,000 of common stock was not recorded on the company's books until January 31, 1914, when a charge was made to Construction and a credit made to Common Capital Stock. Although the company did not receive any land or water rights for its common stock, the $10,000,000 was entered in the plant ledger account entitled Land and Water Rights. This entry was predicated upon the adoption of resolutions by the board of trustees that lands and rights were received by the company for its common stock. The company's first report to the Oregon Commission, for the year ended June 30, 1914, included this $10,000,000 in the balance sheet account entitled Cost of Plant and Equipment Prior to July 1, 1914. This amount remained in Northwestern Electric Company's reports to the Oregon and Washington Commissions as a part of the company's Landed Fixed Capital until 1932. The company now concedes that none of the foregoing accounting entries was in conformity with the facts.

In 1933, the company transferred as of December 31, 1932, $9,600,000 to Miscellaneous Nonoperating Intangible Capital, and $400,000 to the fixed capital account entitled Organization. This transfer was related to the testimony of the company's present secretary and chief accounting officer before the Oregon Commission in a rate case, in which he stated that the common stock had a value of $400,000 as of July 1, 1914, based upon the cash value of the two promoters' services to the company. The Public Utilities Commissioner of Oregon did not accept this valuation.[8]

On September 16, 1936, the company decreased the common stock par

[8] The Public Utilities Commissioner of Oregon stated on page 8 of P.U.C. Oregon Order No. 2228 (1934) 3 PUR(NS) 1, 9:

"With respect to the item of $400,000, it is a purely theoretical estimate of the value, in excess of compensation received, of the services said to have been rendered by Messrs. Fleishhacker to the company before and for several years following its organization in 1911. It was made up by Mr. Platt, secretary of the company, in 1933. Mr. Platt entered the employ of the company in 1925, many years after the alleged services were rendered. The Fleishhackers made no charge to the company for these services and nothing was charged to fixed capital or operating expense therefor, either in the time the Fleishhackers were in control of the company up to 1924 or thereafter, until 1933, when the theory was advanced that a value of $400,000 should be put on these alleged services and this amount included in operating fixed capital. The testimony in support of this item is obviously too speculative and conjectural to justify its inclusion in operating fixed capital, and it is therefore eliminated therefrom and should be expunged from the books."

value from $100 to $35 a share, which reduced the book value by $6,500,000. This $6,500,000 was credited to the $9,600,000 in the account, Miscellaneous Nonoperating Intangible Capital, leaving $3,100,000 in that account, and $400,000 in the Organization account.

As of December 31, 1936, $300,000 was transferred from the Organization account to Miscellaneous Nonoperating Intangible Capital, so that immediately prior to this Commission's required reclassification $100,000 remained in the Organization account and $3,400,000 in the Miscellaneous Nonoperating Intangible Capital Account.

In the company's purported reclassification of electric plant accounts, which it filed with this Commission, the $3,400,000 in the Miscellaneous Nonoperating Intangible Capital Account was transferred to Account 301, Organization, making a total of $3,500,000 par value of common stock in that account.

The company's chief accounting officer attempted to support his estimate of $3,500,000 as the cash value of the 100,000 shares of common stock as of July 1, 1914. He employed three indexes of value. One index was the value of $22.50 a share for the 100,000 shares as of March 1, 1913, which was employed in 1934 as a basis for an income tax settlement by one of the promoters. Another index was the high quotation on the San Francisco Stock Exchange for this stock in 1916 of $25.50 a share. The third index was the price of approximately $50 a share paid in 1925 for the outstanding common stock by American Power & Light Company to obtain sole ownership. From all this, the company's witness conjured $3,500,000 as his estimate of the cash value of the 100,000 shares of common stock as of July 1, 1914. This judgment estimate is without probative value because it is not based upon the value of the consideration received by the company at the time the common stock was issued, and there is no reliable evidence in the record that any promoters' services of demonstrable value or any other consideration was received by the company for its common stock.

The real cost of all the property of the company at the time of the issuance of its common stock was represented by debt securities. This condition likewise prevailed on July 1, 1914, except for a small amount of preferred stock. Even today the company's entire common stock is not represented by any assets received by the company in exchange for it. No electric plant was received in exchange for the common stock; hence, no amount in respect thereof should remain in the electric plant accounts. The issuance of this stock was manipulation.

From the foregoing, we find that the $3,500,000 item is a write-up and was properly transferred to Account 107, Electric Plant Adjustments, in the joint report and it should be entered in that account until disposed of as we shall direct.

Accounting Adjustments Conceded by the Company

Interest on Average Cash Balances and Interest and Taxes on Construction Material Inventories

[7] Northwestern Electric Com-

pany, in its reclassification report, attempted to add to the existing cost of plant as of December 31, 1936, an amount representing interest on average annual cash balances. To determine this theoretical element of original cost of utility plant, the company made a complex computation based upon the claim that for twenty-three years it maintained cash balances available for construction and that it was entitled to capitalize 6 per cent interest on the average amount thereof for each of the years. Of the total amount claimed, $31,443.45 was prorated to the primary utility plant accounts in Account 100.1, Electric Plant in Service, and the remainder, amounting to $2,772.68, was prorated to the primary accounts in Account 108, Other Utility Plant (Steam Heating).

As a theoretical component of original cost of utility plant, the company, in its reclassification study, claimed an addition to the cost of plant, as of December 31, 1936, of a large amount representing estimated interest and taxes on estimated construction material inventories for a period of twenty-one years. Of the total estimated interest and taxes, $238,220.52 was prorated to the primary accounts in Account 100.1, Electric Plant in Service, and the remainder, $34,198.72, prorated to Account 108, Other Utility Plant (Steam Heating).

Cash funds, and material and supply inventories, available for purposes of operation or construction, constitute components of working capital. It is not good practice to capitalize estimated carrying charges on working capital. The company now concedes the impropriety of the claimed adjustments and we hold the amounts thereof must be disallowed. We find that in the joint report the entire amounts of interest on average cash balances and interest and taxes on construction material inventories were properly transferred to Account 107, Electric Plant Adjustments. This transfer effects a cancellation of the proposed restatement.

Jointly Used Property Transferred to Common Utility Plant Account

[8] In the company's reclassification study, only the costs of those facilities used for transmission and distribution of steam were entered in Account 108, Other Utility Plant (Steam Heating). The company placed the cost of all production and general facilities used jointly by the steam-heating and electric departments in Account 100.1, Electric Plant in Service.

In the joint report a total of $4,426,886.24 of jointly used facilities was properly transferred from Account 100.1, Electric Plant in Service, to the detailed plant accounts under Account 108, Other Utility Plant (Common). The company concedes and we find that adjustment of its jointly used property to be proper.

Electric Plant Held for Future Use

[9] The company's reclassification report contained in Account 352, Station Equipment, the cost ($6,612.92) of equipment in the Taylor street substation which was not in service, but was held for future use. In the joint report this item was transferred to Account 100.4, Electric Plant Held for Future Use. We find this adjustment to be proper. The company conceded the adjustment of this item, but

claimed that there should be added certain restated overheads, which we have already found to be improper.

Transfers within Account 100.1, Electric Plant in Service

In the joint report the cost of steel towers and fixtures on the Albina-Lincoln and Camas-Albina transmission lines was transferred from Account 345, Poles and Fixtures, to Account 344, Towers and Fixtures. We find this adjustment to be proper. The company conceded this adjustment, but claimed that certain restated overheads should be added, which we have already found to be improper.

Disposition of Amounts in Account 107, Electric Plant Adjustments

$3,500,000 Write-up

[10] The company contends that it did not have notice that the disposition of any amounts reclassified in the joint report in Account 107, Electric Plant Adjustments, would be considered in this proceeding. This contention of the company is without merit. The evidence clearly shows that the company fully understood prior to the hearing that the question of disposition was an issue. It was not until near the conclusion of the hearing, and after one of the Commission's witnesses had testified without objection on the subject and had been cross-examined, that the company made the contention that the question of disposition was not included within the scope of the hearing.

The company further contends it was not given the details of the proposed disposition either before, after, or during the course of the hearing and was afforded no opportunity to submit evidence and argument thereon. This contention is unfounded, as is shown by the record in this proceeding. Witnesses for the Commission made definite recommendations relative to the disposition of the unsupported amount of $3,500,000. Every opportunity was given the company to submit evidence, to cross-examine the Commission's witnesses and to present argument on the subject. The company cannot now complain that it did not receive a fair hearing merely because it did not choose to submit evidence, offer a plan of disposition, or argue the cause.

As early as August 17, 1939, the Commission corresponded with the company and notified it that its three items of $3,500,000 for common stock, restated interest during construction, and restated administrative and general expense, were questioned as items constituting proper cost of utility plant. In that letter of August 17, 1939, the company was notified that the amount of $3,500,000 was improperly included in Account 301, Organization, and that it should be carried in Account 107, Electric Plant Adjustments. It knew, therefore, that the three presently disputed items were questioned nearly a year before the date of the hearing.

By letter dated May 1, 1940, transmitting the joint report, the company was "requested to submit a plan for disposing of the amount of $3,500,000 set forth on page 29 of the report under Account 107, Electric Plant Adjustments, and described as the par value of 100,000 shares of the common capital stock" of the Northwestern Electric Company. The company

has not submitted a plan of disposition.

It is manifest that the company knew months in advance of the notice of hearing that if it failed to support the questioned $3,500,000 common stock item the amount would be subject to disposition pursuant to the provisions of Account 107, Electric Plant Adjustments. Furthermore, in the company's "Motion to Dismiss," and in its supporting brief, it recognized that the disposition of amounts in Account 107, Electric Plant Adjustments, was an issue in this case.

The applicable provisions of Account 107, Electric Plant Adjustments, are:

". . . Write-ups of electric plant prior to the effective date of this system of accounts shall be recorded herein.

"B. The amounts included in this account shall be classified in such manner as to show the nature of each amount included herein and shall be disposed of as the Commission may approve or direct."

The provisions of Account 107 require the disposition of the amounts recorded in that account. The Commission would be justified, as a matter of proper accounting, in ordering, under the provisions of § 301(a) of the Federal Power Act, the immediate charging off of the amount in question. After considering the financial history and present status of the company, as reflected in reports to stockholders and to this Commission, we are of the opinion that we should not order the amount to be charged off at once.

The Securities and Exchange Commission, in its order[9] dated October 19, 1939, placed restrictions on the payment of dividends on the company's stock. Under these restrictions, dividends are prohibited on common and preferred stock, unless the company expends or accrues for maintenance and depreciation an amount equivalent to 15 per cent of the company's gross operating revenues received from October 1, 1939, to the date of the proposed dividend payment. In addition, dividends on the company's common stock may be paid only from earnings accrued subsequent to September 30, 1939. This latter restriction has the effect of impounding the company's earned surplus of $983,160.45 as of that date.

Considering all relevant factors, we find that it is in the interest of consumers, investors, and the public to direct the disposition of the $3,500,000 write-up by requiring the company to apply all net income above preferred stock dividend requirements to the disposition of the $3,500,000 in Account 107. This disposition, assuming adequate earnings, is the equivalent of obtaining ultimately from the holders of the common stock (the holding company) a consideration of $3,500,000 for the stock. Certainly dividends should not be paid on the common stock until it has the equivalent of a paid-in value.

Preferred Stock Selling Expense

[11] The company reported in Account 107, $243,953.47, representing expenses incurred in connection with the sale of its preferred stock. In the joint report the staffs recommended that the preferred stock selling expense

[9] Holding Company Act Release No. 1760.

be transferred to Account 151, Capital Stock Expense. Our System of Accounts provides that this account "shall include all expenses incurred in connection with the issuance and sale of capital stock which are not properly chargeable to Electric Plant Account 301, Organization, and which have not been charged to Account 414, Miscellaneous Debits to Surplus." We find that the company's preferred stock selling expense is properly includible in Account 151, Capital Stock Expense.

Notwithstanding the company's afterthought contention that the disposition of the amounts in Account 107 was not an issue in this proceeding, the company by letter dated May 31, 1940, concurred in the disposition of the foregoing $243,953.47, as recommended in the joint report.

Miscellaneous Items Erroneously Charged to Electric Plant and Reclassified in Account 107 by the Company

In the company's reclassification study it found that amounts totaling $77.27 had been erroneously charged to the Transmission Land Account. To correct these accounting errors the company properly transferred those amounts to Account 107, Electric Plant adjustments.

In the joint report the staffs recommended that the $77.27 be charged to Account 271, Earned Surplus. In the company's letter of May 31, 1940, acknowledging receipt of the joint report, it contends that the $77.27 should be disposed of by considering it a "delayed item" and transferring it to operating expenses in conformity with General Instruction 6 of the System of Accounts. The amounts constituting the $77.27 are not "delayed items" as defined in the System of Accounts, but genuine accounting errors. We find, therefore, that the proper disposition of the $77.27 is a transfer of that amount from Account 107 to Account 271, Earned Surplus.

Findings

Based upon the evidence in this case, we make the following findings of fact:

1. Northwestern Electric Company owns and operates facilities for the transmission of electric energy in interstate commerce and for the sale of electric energy at wholesale in interstate commerce, is engaged in the business of such transmission and sale, and is, therefore, a public utility subject to the jurisdiction of this Commission within the meaning of the Federal Power Act;

2. The company has not complied with the reclassification requirements of this Commission's Uniform System of Accounts in that it has erroneously included in Account 100.1, Electric Plant in Service: (a) the amount of $408,419.82, representing a restatement in plant accounts of administrative and general expenses charged to expense in the years 1926 to 1936, inclusive; (b) the amount of $31,389.87, representing recomputation of interest during construction from 1914 through 1925; (c) the amount of $3,500,000, representing a write-up of the plant account equal to and associated with the amount of common stock outstanding, which stock was issued without value having been received; (d) the amount of $31,443.45, representing assumed in-

terest on average cash balances; and (e) the amount of $238,220.52, representing assumed interest and taxes on the average materials and supplies held for construction;

3. The cost ($4,426,886.24) of the company's production and general facilities, which are jointly used in rendering electric and steam-heating service, should be included in Account 108, Other Utility Plant (Common);

4. The cost ($6,612.92) of the company's equipment, located in the Taylor street substation, which is not presently in service, should be included in Account 100.4, Electric Plant Held for Future Use;

5. The cost ($77,169.90) of the company's steel towers and fixtures on the Albina-Lincoln and Camas-Albina transmission lines should be included in Account 344, Towers and Fixtures;

6. The $3,500,000 write-up should be included in Account 107, and should be disposed of by applying thereto all annual net income, after allowance for preferred stock dividend requirements, until the disposition of the entire amount has been accomplished;

7. The company's preferred stock selling expense in the amount of $243,953.47 should be included in Account 151, Capital Stock Expense;

8. Miscellaneous items totaling $77.27, which the company erroneously charged to electric plant, should be charged to Account 271, Earned Surplus.

An appropriate order requiring the Northwestern Electric Company to adjust its books of account to conform with our opinion and findings will be issued.

SECURITIES AND EXCHANGE COMMISSION

Re Washington Gas & Electric Company

[File No. 70-107, Release No. 2249.]

Intercorporate relations, § 18.1 — Holding companies — Security acquisition — Purchase through affiliate.

1. Authority for a holding company to purchase outstanding bonds pursuant to Rule U-12C-1, promulgated under § 12(c) of the Holding Company Act, 15 USCA § 79*l* (c), should be subject to the condition that no purchases be made from any affiliated interests, where it appears that customers of an affiliated firm have enjoyed some advantage in disposing of their bonds to the company, p. 223.

Intercorporate relations, § 18.1 — Holding companies — Security acquisition.

2. Authority for a holding company to purchase outstanding bonds pursuant to Rule U-12C-1, promulgated under § 12(c) of the Holding Company Act, should be limited to the purchase of senior bonds where the weak financial condition of the company makes it improbable that the junior bonds will be paid in full at maturity, p. 224.

[August 16, 1940.]

RE WASHINGTON GAS & ELECTRIC CO.

APPLICATION by registered holding company pursuant to Rule U–12C–1, promulgated under § 12(c) of the Holding Company Act, with regard to open market purchases of outstanding bonds; application granted subject to conditions.

APPEARANCES: Sherley Ewing of the Public Utilities Division for the Commission; Washington Gas and Electric Company by its officers.

By the COMMISSION: Washington Gas and Electric Company (hereinafter referred to as "Applicant") a registered holding company and a subsidiary of North American Gas and Electric Company, also a registered holding company, has filed an application pursuant to Rule U–12C–1 promulgated under § 12 (c) of the Public Utility Holding Company Act of 1935, 15 USCA § 79*l* (c) with regard to open market purchases of its outstanding bonds throughout the remainder of the calendar year 1940.

A public hearing was held after appropriate notice and having examined the record in this matter, the Commission now makes the following findings:

Applicant, a Delaware corporation, conducts electric, gas, water, and steam operations in Washington and has two utility subsidiaries operating in Oregon and Utah. Another subsidiary operating in Canada was exempted from the provisions of the act by order of this Commission dated April 4, 1936.[1]

Balance Sheet

The balance sheet of applicant as of May 31, 1940, per books and after giving effect to the elimination of property and investment revaluations and the inclusion of preferred dividends in arrears is as follows:

Assets

	Per Books	Adjusted
Plant, property, rights, franchises, etc.	$15,499,958	$10,775,536[2]
Intercompany investments	3,038,926	2,776,189[3]
Miscellaneous investments	120,256	120,256
Current assets	573,714	573,714
Prepaid charges and accounts	439,738	439,738
Total assets	$19,672,592	$14,685,433

Liabilities

Long-term debt	$10,008,800	$10,008,800
Current liabilities	362,207	362,207
Deferred liabilities	84,034	84,034
Reserves	1,985,388	635,762
Contributions for line extensions	16,904	16,904
Preferred dividends in arrears		691,426[4]
Capital stock	3,826,800	3,826,800
Surplus arising from appraisals	3,374,796	
Surplus arising from retirement of preferred stock	13,460	
Earned surplus or (deficit)	203	(940,500)
Total liabilities	$19,672,592	$14,685,433

On the basis of the above balance

[1] In Re Dominion Electric Power Limited, Holding Company Act, Release No. 159, 1 SEC 411.

[2] In connection with the acquisition of certain properties in 1927 through 1930 an appraisal was recorded on the books at $4,724,422 in excess of cost; of this amount $3,374,796 was credited to surplus from appraisals and $1,349,626 to reserve for renewals and replacements.

[3] At May 31, 1940 the excess of the amount at which investments in subsidiary companies was carried on the books of the parent company over the adjusted underlying book value of such securities amounted to $262,737.

[4] Equal to $51.92 per share on 13,318 shares outstanding of 7 per cent cumulative preferred stock, par value $100 per share.

sheet the percentage of long-term debt to net plant, property, etc., as adjusted, would be 98.68 per cent. Similarly the ratio of reserve for depreciation to gross plant, property, etc., is 12.79 per cent per books while on an adjusted basis (after eliminating upward revaluations with respect to both plant and reserve accounts) it would be 5.87 per cent.

Capitalization

The capitalization of applicant as of May 31, 1940, per books and adjusted to give effect to preferred dividends in arrears and elimination of revaluations is as follows:

	Per Books		As Adjusted	
	Amount	% of Total	Amount	% of Total
Long Term Debt:				
First mortgage 5½% due 1947	$1,442,400	8.37%	$1,442,400	10.62%
First mortgage 5½% due 1953	2,197,400	12.76	2,197,400	16.17
First mortgage 5% due 1955	3,217,000	18.68	3,217,000	23.68
First lien and general mortgage 6% due 1960	3,152,000	18.30	3,152,000	23.20
Total long term debt	10,008,800	58.11	10,008,800	73.67
Preferred Stock:				
7% Cumulative	1,331,800	7.73	1,331,800	9.80
Dividends in arrears	.....	...	691,426	5.09
Total preferred stock	1,331,800	7.73	2,023,226	14.89
Common Stock and Surplus:				
Common stock	2,495,000	14.49	2,495,000	18.36
Surplus:				
Arising from appraisals	3,374,796	19.59		
Arising from retirement of preferred stock	13,460	.08		
Earned	203		(940,500)	(6.92)
Total surplus	3,388,459	19.67	(940,500)	(6.92)
Total common stock and surplus	5,883,459	34.16	1,554,500	11.44
Total capitalization	$17,224,059	100.00%	$13,586,526	100.00%

Earnings

The earning power of the Applicant is indicated by the following tabulation:

	1937	1938	1939	Year ended May 31, '40
Consolidated:				
Gross revenues	$2,319,860	$2,281,885	$2,441,495	$2,508,278
Gross income	685,899	706,797	819,099	862,443
Net income	$(15,455)	$(2,123)	$98,059	$104,202
Times interest and other deductions earned	0.89	1.00	1.13	1.14
Corporate:				
Gross revenues	$1,708,051	$1,641,802	$1,750,649	$1,695,012
Gross income	579,076	595,074	703,530	733,466
Net income	$(20,511)	$(14,007)	$87,657	$89,981
Times charges earned	0.97	0.98	1.14	1.14

During the year ended May 31, 1940 bond interest was earned 1.34 times on a consolidated basis, and 1.32 times on a corporate basis. During this period combined depreciation expense and maintenance was equal to

1.97 per cent of gross property account less revaluations or 12.55 per cent of gross revenues.

Accumulated undeclared dividends on the 7 per cent cumulative preferred stock of the company as of May 31, 1940 were equal to $691,426, or $51.92 per share. Although the record indicates that for the year 1940 an estimated $234,607 in cash would be on hand at the year's end without accounting for the proposed bond purchases, it is clear from the above that the earning power supporting the bonds of Washington Gas and Electric Company is weak.

Nature of Proposed Transactions

According to this application the Applicant proposes to use a sum of not in excess of $100,000 for open market purchases of the above-mentioned bond issues. The proposed acquisitions will be in addition to those already made this year under our Rule U-9C-3(14). The reacquired bonds will not be retired, but will be held in the treasury. Since January 1, 1940, the Applicant has purchased the following principal amounts of the various issues and the record states that the over-the-counter quotations on July 1st were as indicated below:

	Amount	Bid	Offered
First mortgage			
5½% due 1947	$14,500	75	77
5½% due 1953	22,100	74½	none
5% due 1955	32,000	72½	none
First lien and general mortgage			
6% due 1960	31,000	49	51

[1] The record indicates that the principal market for these bonds is New York, Chicago, Seattle, and Boston, in which cities four investment houses make a market in the securities. The record also contains a list of the holders of $10,000 or more principal amount of each series of bonds and statements by officers and directors of the holding company system with regard to their direct and indirect interest in these securities within the twelve months preceding the filing of the application. From such material it does not appear that any affiliated interests have particularly large interests in these securities. However, the quarterly reports of acquisitions of outstanding securities [5] indicate that from December 1, 1935, through March 31, 1940, $101,700 principal amount of the Applicant's outstanding bonds were purchased from A. C. Allyn & Co., which firm is stated in the record to be one of those making a market in the securities. One director of North American Gas & Electric Company is a director and vice president of A. C. Allyn & Co. Since, during the same period, only a total of $192,600 principal amount of bonds was purchased by the Applicant, it would appear that customers of A. C. Allyn & Co. have enjoyed some advantage in disposing of their bonds to the company, or that the firm has purchased bonds from its customers and sold them to Applicant when funds were available for acquisitions.

Without indicating any criticism of such transactions, it does appear that other security holders may be at some disadvantage, especially if they are not in close contact with the large financial centers. In view of the foregoing it would seem appropriate to condition our order so that no purchases should be made from any affiliated interests.

Only one of the above bond issues

[5] Form U-14-1 filed by Applicant and Re North American Gas & E. Co. File No. 36-1.

(the 5½ per cent series due 1947) has a sinking-fund provision. The indenture securing that issue requires the annual deposit of a sum equal to 1 per cent of the greatest amount outstanding during the preceding six months' period. All moneys in such sinking fund are to be used exclusively for the purpose, acquisition, retirement, or redemption of the bonds of that series. The Applicant may tender reacquired bonds to meet the sinking-fund requirements of this issue.

[2] Inasmuch as the weak financial condition of the Applicant makes it improbable that the junior bonds will be paid in full at maturity, it is our opinion that approval should only be given to the application with regard to the purchase of the senior bonds. Applicant has stated that it desires freedom to acquire bonds of any issue exercising its discretion with regard to favorable market conditions. Nevertheless, such a reason does not offset the probable inequities of a company in such a weak financial condition using free cash for the retirement of junior obligations, when there is a substantial amount of senior securities outstanding. Accordingly the application will be denied in so far as it relates to the first lien and general mortgage bonds.

An appropriate order will issue permitting the use of the sum of $100,000 during the remaining portion of the calendar year of 1940, for the purchase of bonds of the following issues:

First mortgage 5½% series due 1947
First mortgage 5½% series due 1953
First mortgage 5% series due 1955

Our order will be subject to the following conditions:

1. That the transactions be carried out in the manner of and for the purpose represented by the application and in accordance with the terms and conditions of our order.

2. That Washington Gas and Electric Company file with the Commission within ten days after the first of each month, a statement showing the amounts of each series purchased, prices, brokers, and beneficial owners.

3. That no bonds be purchased from any officers or directors of the holding company system or from or through any firms of which such individuals are affiliates.

By the Commission, Commissioners Healy and Henderson being absent and not participating herein.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Boston Edison Company

[D.P.U. 6228.]

Security issues, § 13 — Sinking-fund provision.

1. A sinking-fund provision in connection with the issuance of first mortgage bonds was approved as not adversely affecting the public interest and as a safeguard inducing the investor to loan his money at reasonable rates, p. 226.

Security issues, § 5 — Optional redemption clause.

2. Bonds embodying an optional redemption clause under which the company was given the right to call them before maturity were approved, p. 227.

Security issues, § 5.1 — Call premiums — Optional redemption clause.

3. A call premium for the protection of bondholders who purchased their bonds at the advanced price represented by the amount of premium was approved as likely to result beneficially to the company, in giving assurance of the best possible price at the time of sale, and as a benefit to the purchaser by the secured advantage of a net rate of yield which would be at least equal to the basis upon which he made the original purchase, irrespective of the date on which the bonds might be called, p. 227.

Security issues, § 5.1 — Call premuim — Variation — Sinking-fund provision.

4. A lower call premium for bonds which may be called for a sinking fund is not illogical, as the sinking fund is in purpose an additional protection for the investor and no substantial penalty should be imposed upon the company by the necessity for paying the call price, p. 227.

Security issues, § 129 — Decision on application — Avoidance of delay.

5. The Commission ought to act affirmatively upon a petition for authorization of a bond issue without delay, in the absence of any controlling fact making advisable a detailed engineering inventory, since there is involved the element of prevailing market conditions, which, owing to extraneous influences of wide import both domestically and abroad, may be affected adversely to the company's interest without notice, p. 229.

[November 18, 1940.]

PETITION *for approval of issue of bonds for refunding; granted.*

APPEARANCES: F. Manley Ives and James V. Toner, Treasurer, for the petitioner.

GRANT, Commissioner: Boston Edison Company, the petitioner hereunder, seeks authority by vote of this Department, as provided in § 14 of Chap. 164 of the General Laws (Ter. Ed.) for the issuance, at not less than par, of bonds of the company in the aggregate amount of $53,000,000. This issue is proposed to be secured by a first mortgage of the company's franchise and property under a trust and mortgage indenture between the company and the State Street Trust Company of Boston, as trustee.

The purpose of the issue is to obtain funds for redemption of outstanding bonds, similarly secured and identical as to principal amount, maturing in 1965. The prior bonds were issued in 1935, after the Department had voted that the same were reasonably necessary for the payment of indebtedness theretofore incurred for additions to and extensions of the plant and property of the company. The petitioner represents that the refinancing operation herein proposed will effect an annual saving amounting to between $120,000 and $150,000, with resultant benefit to the company and to its customers. It is the intention of the company, in the event of our approval,

to pay to bondholders of the outstanding issue the par value of the said bonds plus the call premium of each, and in the event that insufficient funds are received from the sale of the new bonds, the difference required to make up the amount of the call premium will be paid from current funds.

In pursuance of the requirement of the statute, the Department held a public hearing on the petition November 12, 1940, at which representatives of the company submitted a certified copy of the vote of the stockholders, together with the registration statement required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 and other pertinent information. No one appeared to oppose it.

It was submitted on behalf of the petitioner that during the period from January 1, 1935, to September 30, 1940, which is inclusive of the entire time intervening since the company issued the bonds herein scheduled for retirement, there were gross additions to the plant of Boston Edison Company amounting to $18,081,513.68. Concurrently there were effected retirements from plant of $11,758,302.82, representing net additions to plant of $6,323,210.87, the expense of which was met out of the general funds of the company, no new stock or bonds having been issued therefor.

[1] The bonds to be issued under the proposed plant are characterized by a sinking-fund provision similar to that contained in those of outstanding issue, which provides for the payment into such fund of one per cent per annum, beginning July 1, 1941. This feature was the object of criticism at the hearings held in connection with the prior petition, largely on the ground that it constituted somewhat of a departure from the established practice of the Department and because of the contention that payments into the fund for retirement of the bonds would be drawn, in last analysis, from contributions furnished by the company's customers.

In its decision, approving the issue, dated July 3, 1935 (D. P. U. 4968, 10 PUR(NS) 99, 104), the Department considered these objections and justified its action with relation thereto in the following language:

"It is not strictly a sinking fund, but rather a retirement fund, the one per cent being used to retire bonds, and thus the danger of loss by investment of the sinking fund is avoided. We see nothing objectionable in the sinking-fund provision. It will reduce interest charges and will have a similar effect as appropriations to reserve for depreciation and will give additional assurance to the stockholders and to the public that the company is putting its house in order."

The similar retirement provision of the new bonds further postpones the operative provisions of the plan until December 1, 1946. It provides that bonds having a par value equal to one per cent of the largest amount which shall at any time thereafter be outstanding shall be purchased and retired upon an annual basis. We are aware of no conflicting interest in the relations of the company and the public by which restatement of the view expressed in D. P. U. 4968, *supra*, would be estopped. This sinking-fund provision, so-called, is in the nature of a protective device for the security of the investor. The annual payments

thereafter required are not chargeable to operating expenses. Their effect will be progressively to diminish interest charges and, provided there are established whatever safeguards may be necessary and proper to prevent the inclusion of this fund in any basis of estimating future rates and prices to customers, it cannot adversely affect the public interest.

The fact that the Department has seldom authorized the use of such a device for the retirement of funded obligations is not sufficient, of itself, to warrant an expression of disapproval in any individual case. As a matter of fact there have been sinking-fund authorizations in a number of cases before the Department extending over a considerable period of time. Such a fund was provided in D. P. U. 439, decided June 3, 1921, which was a petition by the New England Power Company for modification of a certain order of the Board of Gas and Electric Light Commissioners dated July 26, 1917, approving an issue of bonds and stock by said company. In this case the petitioner was ordered to make semiannual payments into the fund for retirement of bonds sold below par. Similar provision was made in D. P. U. 3435, involving stock and bonds of the Barnstable Water Company, decided May 10, 1929. There is likewise the recent case of the Housatonic Water Works Company (D. P. U. 5831), issued June 26, 1939, in which the Department ordered the payment of $2,000 per annum into a retirement fund for the cancellation of notes in the aggregate amount of $30,000, issued in connection with the construction of a new filtration system.

It must be borne in mind that the attraction of necessary capital for conducting the business of a public utility is dependent, in large measure, upon the establishment of such safeguards as will induce the investor to loan his money at reasonable rates. Those who purchase long-term utility obligations, particularly during periods of economic instability require assurance that their security will not be impaired by improper management practices or by overzealous regulation. The timidity of bond investors where traction securities are concerned is commonly known; indeed, it was necessary for the general court several years ago to change the name of the Metropolitan Transit District to Boston Metropolitan District in order to obtain a more flexible market for bonds issued in connection with the Boston Elevated Railway Company financing, notwithstanding that these securities were backed by the credit of the commonwealth. In that case the very use of the word "transit" was found to be a deterrent.

The present financial condition of many American railroads is also somewhat in point. In some cases, notably that of the New York, New Haven & Hartford Railroad Company, recently before this Department as a petitioner for service reductions, these railroads, freed of the encumbrance of top-heavy accumulated debt, would be able to operate maximum schedules and to do it profitably. There is at least opportunity for discussion of what might have been the case had it been feasible or permissible to have retired these issues over the years by the sinking-fund method.

[2–4] In the case before us for decision the proposed bonds embody an

optional redemption clause under which the company is given the right to call them before maturity. It is further stated by the petitioner that in all probability the issue will be sold at a premium. In such event it will be necessary, for the protection of those holders who purchase their bonds at the advanced price represented by the amount of premium, to make provision for payment of a call premium in the acquisition of bonds which are redeemed before the date of maturity. Accordingly, the proposed plan sets forth that the amount of such call premium shall be not less than 3 per cent nor more than 4 per cent of the principal amount received in excess of the initial public offering price. This initial call premium, according to petitioner's representations, will be reduced by amounts as nearly equal as may be, in the case of bonds called for redemption after December 1, 1941. It is thus anticipated that par will be reached at maturity and, in the intervening period, any bondholder who surrenders his bonds for payment on an intermediate date of call will receive a price no less favorable, on a yield basis, than the price he pays at the time of issue of the bonds by the company.

Objectively considered, we think this provision for call premium will result beneficially to the company as it gives assurance of the best possible price at the time of sale. Conversely, there is a distinct benefit to the purchaser by the secured advantage of a net rate of yield which will be at least equal to the basis upon which he made the original purchase, irrespective of the date on which the bonds may be called. We further apprehend that there can be no public objection to a provision which secures to the company the lowest possible interest rate and leaves the matter of electing to call solely within the company's discretion.

The bonds which may be called for the sinking fund will bear a lower call rate than the bonds called under the optional redemption clause but provision has been made that at no time will the call price for sinking-fund bonds be less than a price sufficient to return to the investor his net yield rate up to and including the date of the call. This lower call price for bonds called under the sinking-fund provision appears not to be illogical as the sinking fund is in purpose an additional protection for the investor and no substantial penalty should be imposed upon the company by the necessity for paying the call price.

The mortgage securing the proposed bond issue includes substantially the same properties as those covered by the mortgage security for the present outstanding bonds, subject, of course, to a net increase accruing from the balance of extensions and retirements made since their date of issue in 1935. These have been checked in recent months by the engineering and accounting divisions of this Department and we are satisfied that there have been made by the company expenditures properly capitalizable sufficient to warrant the issue of bonds to the amount of $53,000,000.

The amount of outstanding capital stock of the company consists of $61,716,400 in shares of par value and paid-in premiums of $41,105,947.45. The plant investment, as of December 31, 1939, shown in the 1940 return on file in the Department, amounts to $164,651,808.56, to which are added

items of $6,791,793.34, representing general equipment, and of $610,668, unfinished construction, making a combined cost of all property of the company of $172,054,269.90.

The accounting and engineering divisions of the Department report that, for the five years ended December 31, 1939, a check of the additions, betterments, and retirements filed by the company shows total additions to property of $16,828,422.41 and total retirements from this account of $11,005,540.97, making a net total of additions during that period of $5,822,881.44. This amount approximates the sum of $6,323,210.87 which the company represents is the net total of additions between January 1, 1935, and September 30, 1940, the difference being accounted for by the slight difference in time used as the basis of the company's figures.

[5] We are, therefore, convinced that there has been no change in the nature or extent of the company's property that would lead to a belief that, as presently constituted, it does not furnish adequate security for the obligations sought to be incurred. We are likewise mindful that, in enacting § 14 of Chap. 164, the general court intended us to act in these matters with a degree of despatch consistent with the nature of existing circumstances. This section provides that:

"The Department shall render a decision upon an application for such issue within thirty days after the final hearing thereon."

While this section, as interpreted in the Department's order of July 3, 1935, 10 PUR(NS) 99, undoubtedly is directory, rather than mandatory, we think, in the absence of any controlling facts making advisable a detailed engineering inventory at this time, we ought to act affirmatively upon this petition without delay. There is involved the element of prevailing market conditions which, due to extraneous influences of wide import both here and abroad, may be affected adversely to the petitioner's interest without notice.

There can be no objection to this issue upon the basis of § 13 of Chap. 164 which provides that bonds may be issued by a gas or electric company to an amount not exceeding its capital stock actually paid in at the time of such issue and applied to the purposes of the corporation, increased by all cash premiums paid to the corporation thereon and likewise so applied. As hereinbefore stated, the total par value of the petitioner's capital stock and premiums far exceeds the amount of these bonds and those which they are intended to replace.

Concurring Commissioners: Cotton, Chairman, Curley, McKeown, and Whouley.

Accordingly, we are of opinion that there is nothing pertaining to the proposed issue which warrants withholding our approval thereof and the Department therefore

Votes, that the issue of bonds by Boston Edison Company, as described in the following order, is reasonably necessary for the purpose for which such issue of bonds has been authorized, and it is

Ordered, that the Department hereby approves of the issue by Boston Edison Company, in conformity with all the provisions of law relating thereto, of first mortgage bonds, at not less

than par and accrued interest, to the amount of $53,000,000 par value, to be dated December 1, 1940, and made payable December 1, 1970, bearing interest at a rate not exceeding 3 per cent per annum, payable semiannually, as being reasonably necessary for the purpose for which such issue of bonds is authorized; said bonds to be redeemable in whole or in part at any time at a premium to be determined by the initial offering price which in case of sale to underwriters shall be the price, exclusive of accrued interest, at which the underwriters first offer the bonds to the public and in case of a private sale shall be the price, exclusive of accrued interest, paid by the purchaser, the initial premium, for redemption on or before December 1, 1941, being the premium included in the initial offering price plus an additional amount which shall be not less than 3 per cent nor more than 4 per cent of the principal amount of the bonds, and the premium for redemption after December 1, 1941, being the initial premium less reasonably uniform periodic reductions which shall reduce the premium at December 1, 1970, to zero, the redemption price to be at all times not less than that at which the yield to stated maturity will be equivalent to the yield to stated maturity of the initial offering price at the date of issue; said bonds commencing in 1946 to be entitled to the benefit of a sinking or analogous fund for the annual retirement of part thereof involving an annual payment by the company not exceeding one per cent of the maximum principal amount thereof which have at any one time been outstanding, and the initial premium for bonds called for payment for sinking-fund purposes during the twelve months' period following December 1, 1946, being the sum of (a) the premium at which the redemption date, when added to the principal amount of the bonds, the yield to stated maturity will be equivalent to the yield to stated maturity of the initial offering price at the date of issue plus (b) an additional amount which shall be not less than three-quarters of one per cent nor more than $1\frac{3}{4}$ per cent of the principal amount of the bonds, and the premium for such redemption for the successive twelve months' periods following December 1, 1947, being such initial premium less reasonably uniform periodic reductions which will reduce the premium at December 1, 1970, to zero, the redemption price to be at all times not less than that at which the yield to stated maturity will be equivalent to the yield to stated maturity of the initial offering price at the date of issue; in all cases bonds called for redemption to be redeemed with accrued interest to the redemption date; said bonds to be secured, alone or with other obligations of the company, by an open first mortgage of the company's franchise and property now owned or hereafter acquired made to State Street Trust Company, trustee; said bonds to be the initial series, designated series A, issued under said mortgage; and the proceeds of said bonds to be applied so far as sufficient to the payment and cancellation of obligations of the company represented by its first mortgage bonds, series A, sinking fund $3\frac{1}{2}$s due 1965, or obligations issued for the renewal, extension, or retirement thereof, and to no other purpose.

MISSOURI PUBLIC SERVICE COMMISSION

Re Middle States Utilities Company of Missouri

[Case No. 9843.]

Valuation, § 413 — Evidence — Tax returns — Inventory.

1. An inventory of cable and poles of a telephone company made for appraisal purposes should be accepted rather than quantities shown in tax statements where there is no information before the Commission to show how the tax returns were prepared, p. 236.

Rates, § 159 — Attraction of business — Views of stockholders.

2. Due regard should be given to a contention by preferred stockholders of a holding company that a subsidiary company should not be granted any increase in rates because an increase would result in an actual loss in revenues because of the withdrawal of service by different subscribers, particularly in the face of testimony submitted by the company showing that there has been a material reduction in the use of the service instead of the desired growth, p. 237.

Valuation, § 211 — Excess property.

3. The Commission should determine what value should be fixed as a rate base with due regard to excess capacity of plant and the use made of the property in serving present customers, giving consideration to reasonable future requirements, where there has been a continuous increase in the investment even though the number of customers has decreased, p. 238.

Rates, § 202 — Unit for rate making — Telephone toll and exchange.

4. Allocation of telephone property as between toll service and exchange service was considered unnecessary in determining rates of a company furnishing free service over many lines, p. 242.

Depreciation, § 26 — Straight-line method — Relation to accrued depreciation.

5. Use of the straight-line method in determining the amount to be set aside annually to depreciation reserve is erroneous when the condition of the property is determined by the observation method rather than straight-line calculations, p. 242.

Depreciation, § 26 — Annual requirements — Consistency with accrued depreciation.

6. An estimate of annual depreciation allowance giving effect to the method used in determining the accrued depreciation of the property should be approved, p. 242.

Depreciation, § 77 — Telephone property.

7. An annual depreciation allowance of 3.25 per cent was approved in the case of a telephone company, p. 242.

Return, § 111 — Telephone company.

8. A return allowance of 6½ per cent was approved for a telephone company, p. 244.

[December 2, 1940.]

APPLICATION *by telephone company for authority to increase rates; increased rates authorized.*

By the COMMISSION: This case is before the Commission on application of Middle States Utilities Company, filed February 1, 1940, for an investigation and finding of the Commission fixing the fair value of the applicant's property in Missouri used and useful in furnishing telephone service, and authority for the applicant to file a schedule of rates for telephone service in Missouri as may be found necessary to produce a reasonable return upon the value of the property. The Commission issued its report and order on February 20, 1940, ordering its engineering and accounting departments to make such investigation of the company as deemed necessary to enable the Commission to determine rates for telephone service that will produce fair and reasonable return on the present fair value of the Company's property used and useful in public service.

Following the investigation made by the accounting and engineering departments, the case was heard before the Commission on May 22, 23, and June 7, 1940, due notice of hearing having been given all interested parties. The applicant, the cities of Kahoka, Bethany, Hamilton, Unionville, Lawson, and a representative of 124 preferred stockholders of the Middle States Utilities Company of Delaware appeared by counsel. The Commission was represented by its chief counsel and the heads of its accounting, engineering, and telephone departments.

At the hearing, petitions were filed by the 124 preferred stockholders of the Middle States Utilities Company of Delaware, which is the Company holding the common stock of the Middle States Utilities Company of Missouri, the Andrew County Mutual Telephone Company, and the Clinton County Telephone Company. These petitions asked that the Public Service Commission grant no further increase in rates to the Middle States Utilities Company of Missouri, contending that although the petitioners own preferred stock only in the holding company, as a matter of fact they are the owners of the operating companies because the common stock in the holding company has no equity. These petitioners protested any increase on the theory that such an increase would be damaging to the Company and to the interest of the petitioners, and that the increase, if granted, would result in an actual loss of revenue to the companies rather than an increase in revenue, because of the discontinuance of service by the different subscribers.

The Middle States Utilities Company of Missouri, hereinafter called "Company," is a Missouri corporation with general offices located at Plattsburg, Missouri, and furnishes telephone service in northern Missouri through exchanges located in the fol-

lowing 21 cities and villages: Baring, Bethany, Blythedale, Brimson, Cainsville, Cameron, Gilman City, Hamilton, Hartford, Jamesport, Kahoka, Kingston, Lawson, Memphis, Mercer, Mt. Moriah, Princeton, Ridgeway, Unionville, Wayland, and Winston.

In presenting its application for an increase in rates, the Company submitted an appraisal of the physical property of the Company prepared by Mr. F. M. Plake, consulting engineer, as of the date December 31, 1938, showing the original cost, cost of reproduction, and the cost of reproduction less depreciation. According to the appraisal introduced by the applicant, Exhibit No. 2, the inventory of the physical property of the Company was made by actual count of the various units as prescribed by the Federal Communications Commission. Permanent map records of all the pole lines and cable were prepared, and the entire inventory is considered correct within reasonable limits. The testimony shows that the original cost of the property for the period 1926 to December 31, 1938 was determined by a canvass of all the vouchers of the Company covering purchases of construction material. For the earlier period prior to 1926, the records are not complete and it was necessary to supplement the records that were available with estimates of cost. Labor performances for the original construction are the results of studies of other and similar properties under the same management, or studies made on the same property.

In the Company's original cost appraisal, an item was allowed for organization which was computed as 1 per cent of the cost of the physical property. A general overhead allowance of 8 per cent was added to the entire cost including organization, the amounts included for each of said overhead allowances being as follows: preliminary expense, 1 per cent; administrative expense, 1 per cent; legal expense, ½ of 1 per cent; engineering, 3½ per cent; taxes during construction, ½ of 1 per cent; interest during construction, 1½ per cent.

After the Company filed its inventory and appraisal, the Commission engineers checked the inventory, visiting every exchange in the system. Having access to the Company's working papers on which the inventory was prepared, Commission engineers checked the dimensions of buildings, calculations of quantities, number and kind of poles, and other pertinent details, and by means of this spot check the Commission engineers were satisfied that the inventory as filed by the Company was substantially correct.

In checking the original cost estimate, the Commission engineers had access to the vouchers showing the purchases and expenditures of the Company for materials. A purchase record of the various items of materials had been made by the company engineer, and this was checked sufficiently to assure the Commission engineers that the average cost of materials used by the company engineer in his original cost estimate was correct. The labor performance in the company engineer's original cost estimate was found to be correct by the Commission engineers on all accounts except buildings.

The Commission engineers' investigation of the original cost of buildings indicated that the Company's es-

timate was too high, and they adjusted that item in the estimate that they submitted in Commission's Exhibit A. The Commission engineers did not distinguish between organization and other general overheads but included all of them in one lump sum. The original costs at December 31, 1938, as shown in Company's Exhibit 2 and Commission's Exhibit A are as follows:

Item	Original Cost Estimate	
	Comm. Engrs.	Company
Land	$9,570	$9,570
Buildings	49,494	54,129
Remaining physical property (Accts. 221–264, incl.)	606,450	606,450
	$665,514	$670,149
General overheads, including organization	60,429	60,850
Total	$725,943	$730,999

The Commission engineers allocated one-half of the central office land and building at Jamesport to property not used in public service. The amount so allocated was $1,777 on the basis of original cost. We will discuss further the subject of property not used in public service later in this report.

After careful consideration of the facts and evidence concerning the item of original cost, the Commission is of the opinion that the original cost of the property of the Company at December 31, 1938, was $725,943, and of the property suitable for use in public service was $724,166.

In the Company's cost of reproduction pricing as of the date December 31, 1938, the appraisal takes into consideration the theory that the entire property of the Company would be constructed in one continuous operation and in the most economical manner. Material costs were obtained from manufacturers and jobbers who supplied the Company's needs, structures were priced from contractors' and dealers' quotations, switchboards were priced by companies who originally manufactured and installed the boards, and labor gang make-ups and labor performances were adopted that were deemed applicable to continuous and wholesale construction, and present labor rates as paid by the Company applied to said gangs. Provision was made for the direct material and labor overhead costs which include purchasing and stores expense, miscellaneous materials, miscellaneous labor expense, supervision of productive labor and materials, public liability, property damage, and compensation insurance, and omissions and contingencies. On items of property such as switchboards and structures, which were appraised as installed, it was assumed that the contractors giving the quotations included what they considered a proper allowance for such a cost.

The Commission engineers also prepared a cost of reproduction estimate of all the property as of December 31, 1938. The estimate prepared by the respective engineers follows:

Plant Accounts	Cost of Reproduction December 31, 1938 Comm. Engrs.	Company
211 Land	$7,700	$7,700
212 Buildings	58,030	58,225
221 Central office equipment	101,571	101,571
231 Station apparatus	108,288	97,480
232 Station installations	10,504	6,934
233 Drop wires	16,307	10,347
234 P.B.X.	249	249
235 Booths and special fittings	1,510	1,510
241 Pole lines	262,975	306,178
242.1 Aerial cable	39,404	32,001
242.2 Underground cable	12,373	11,671
242.3 Buried cable	51,801	47,520
243 Aerial wire	101,879	86,042
244 Underground conduit	11,550	11,550
261 Furniture and fixtures	5,761	5,761
264 Vehicles	10,706	10,706
Subtotal	$800,608	$795,445
General overheads including organization	109,413	108,377
Total	$910,021	$903,822

The engineer for the Company prepared a cost of reproduction less depreciation appraisal which was obtained by the application of percentages, representing condition, to the cost of reproduction new of the property as found in the various accounts. Depreciation, as shown, is the result of field inspections, consideration of the age of the property, character of maintenance, and examination of the record of removals. The Commission engineers observed the property for depreciation, and after that inspection adopted the Company's various percentages for the accounts as to the condition per cent, being of the opinion that these percentages were conservative. The respective reproduction less depreciation appraisals are as follows:

Item	Cost of Reproduction Less Depreciation Comm. Engrs.	Company
Land	$7,700	$7,700
Other physical property (Accts. 212–264, incl.)	567,364	561,470
	$575,064	$569,170
General overheads, including organization	82,905	77,553
Total	$657,969	$646,723

The manager of the municipal light and water department of the city of Kahoka testified for the protestants that the average small pole, 20 to 25 feet in length, could be delivered, hole dug, and pole set for $1.50. He also testified that labor for a 30-foot pole would cost $2, and for 35-foot pole would be around $2.50. He also testified that the city of Kahoka had purchased 25-foot Class 6, 30-foot Class 5, and 35-foot Class 5 creosoted pine poles at $5.55, $8.93, and $13.32, respectively. He also testified that butt-treated cedar poles might be purchased at the following prices: 25-foot, $3.15; 30-foot, 6-inch top, $5.88; 35-foot, 7-inch top, $9.98, delivered at Kahoka. Although the protestants witness' estimate of labor cost for poles was considerably less than the amount shown in the Commission engineers' appraisal for similar sized poles, it was shown through cross-examination that the labor figures he quoted did not include an allowance for workmen's compensation and public liability insurance, or for social security taxes, his estimate being based entirely on the cost experience of a municipal electric plant, which does not have to pay such items of expense. The cost

of creosoted pine poles purchased by the city of Kahoka was greater than the amount used in the Commission engineers' appraisal for creosoted pine poles of the same length. The inventory does not classify the lengths of poles as to sizes, and in view of the fact that the Commission engineers' unit material cost includes a provision for direct material overheads, it is obvious that the class of poles quoted by the protestants' witness were larger and heavier than those found in the inventory. The quotation given for cedar poles was for Western Red Cedar poles, according to protestants' Exhibit No. 17, with "B" treatment. The inventory does not disclose the top size or the class of treatment, nor does it indicate whether the poles are Northern White or Western Red Cedar. In the case of untreated poles, the prices shown by protestants' Exhibit 17 are somewhat in line with prices used by the Commission engineers, although the confusion exists as to whether the inventory is comprised of Northern White or Western Red Cedar poles.

[1] The protestants also introduced the Company's tax statements for its property in Clark county at June 1, 1938, and June 1, 1939, and from these statements the protestants brought forth the contention that the quantities shown for cable and poles in the tax statements do not agree with the quantities shown in the inventory. There is no information before the Commission to show how the tax returns were prepared, and in view of the fact that there is testimony regarding the manner in which the inventory was made for the appraisal purposes, and the check made by the Commission engineers, the Commission will accept the inventory as shown in Commission's Exhibit A and Company's Exhibit 2.

The protestants contended that some of the estimates of fair market value of land used in the Commission engineers' and in the Company engineers' appraisals were too high. It appears that after investigation the Commission engineers adopted the land values used by the Company. In their investigation the Commission engineers obtained independent appraisals on a number of tracts of land having an appraised fair market value of $5,450, which in the Company's appraisal were estimated to have a fair market value of $5,415. After having made that check, the Commission engineers assumed that the total used in the Company appraisal was correct and adopted it, although some of the estimates secured by the Commission engineers did not agree, item for item, with those shown in Company's Exhibit 2. Certain tracts were higher in the Company's appraisal, while others were lower.

There was also testimony by the protestants to the effect that the central office equipment at Kahoka had been installed for ten or twelve years and that there had been no change in that time.

In the Commission engineers' appraisal, the allocation of 50 per cent of the Jamesport central office land and building to property not used in public service amounted to $2,767 and $2,017 in the cost of reproduction and reproduction less depreciation appraisals, respectively.

After careful consideration of all the facts and evidence as disclosed by

the record in this case on the subjects of cost of reproduction and of cost of reproduction less depreciation, the Commission is of the opinion and finds that the cost of reproduction of all the property of the Company suitable for use in public service at December 31, 1938, including land at fair market value, was $905,000, and that the cost of reproduction less depreciation of the same property at the same date was $650,000.

The Company included in its appraisal an item of $10,925 for materials and supplies which is based on the monthly average of the materials and supplies it had on hand during 1938, and the amount, according to its statement, is not excessive for that size property. The witness for the company stated that only a very small stock of poles and pole line materials are included and most of the material is telephone drop wires and miscellaneous materials. About $5,000 worth of telephones were eliminated from the materials and supplies because they were in excess of what was considered by the Company as necessary to have in stock. The Commission engineers included $10,148 for the item of materials and supplies, which was based on the same source of information as the Company's recommendation. The Company's appraisal showed an item of $7,300 for cash working capital. The Commission accountants recommend a cash working capital of $7,000 at October 31, 1939. The Commission is of the opinion that $17,148 is an adequate amount for materials and supplies and cash working capital.

Statement No. 4 of Commission's Exhibit E shows the net additions and betterments as recorded and adjusted for the period January 1, 1939 to October 31, 1939. The total amount as adjusted is $5,978.90.

The Company's witness testified that the Company, by reason of its combination of all the various exchanges offering free service to each subscriber outside of the exchange, and by reason of its trained personnel, and things of that nature, has a going value above the actual cost of material that goes into the property. He also stated that just because the Company does not make money is no indication that it does not have going value.

As to price trends, the witness testified that the weighted increase since the date of the appraisal was about $7,000 on this property.

[2] We have noted above the contention made in this case by the preferred stockholders of the holding company that the Company should not be granted any increase in rates. They further contend that they are the owners of the operating company because the common stock in the holding company has no equity. Their opinion seems to be that any increase in rates would result in an actual loss in revenues instead of increase in revenues because of the withdrawal of service by the different subscribers. Such position on the part of security holders in the corporation indicates they are of the opinion the value of the property on an earnings basis is less than it was formerly. One of the witnesses for the Company testified that during the past ten years there has been a loss of over 5,000 customers, probably referring to the three associated companies, Middle States Utilities Company, Andrew County Mutu-

al Telephone Company and Clinton County Telephone Company. This, of course, is a serious loss in any company's business. The Commission is of the opinion that due regard should be given to the contention of the above preferred stockholders particularly in face of the testimony submitted by the Company showing there has been a material reduction in the use of the service instead of the desired growth.

In looking over the annual reports filed by the Company with the Commission we find that the number of subscribers has decreased from year to year. The following tabulation bears this out:

	Company-owned Stations			Customer Owned	Total
	City	Rural	Total	Stations—Rural	Served
1928	4,928	2,606	7,534	2,090	9,624
1929	4,896	2,255	7,151	2,323	9,474
1930	4,742	2,349	7,091	2,106	9,197
1931			6,718		
1932			6,039		
1933			5,564		
1934			5,295		
1935			5,423		
1936			5,379		
1937			5,366		
1938	3,975	1,389	5,364	1,889	7,253
1939	4,050	1,442	5,498	1,895	7,393

The investment, as shown by the annual reports for the respective years covered by the reports, is also shown below:

1928	$882,603	1934	$1,022,830
1929	927,763	1935	1,023,772
1930	964,249	1936	1,032,657
1931	1,014,286	1937	1,039,268
1932	1,014,366	1938	1,045,435
1933	1,010,331	1939	1,051,982

[3] It is noted that from the year 1928 there has been a continuous increase in the investment, even though the number of customers has decreased. This may be explained by the fact that the Company until 1928 or 1929 doubtlessly was experiencing a growth similar to that of other companies, and anticipating a continuous growth, made plans for the construction of its system to meet the increased growth. The program of increasing value of the property did not cease until about 1932–1933. Following that there has been very little change in the investment in the system.

Such information convinces the Commission that it should seriously consider the question as to whether or not the Company now has in its system an excessive amount of property to furnish adequate and satisfactory service to its present and expected subscribers. If found to be excessive, then we should determine what value should be fixed as a rate base with due regard to the excess capacity of the plant and the use made of the property in serving the present customers, giving consideration to reasonable future requirements.

In Commission's Exhibit B, the reproduction cost and reproduction cost less depreciation at December 31, 1938, as submitted by the Commission's engineers for the property located at the various exchanges are shown below. The evidence also shows the capacity of the switchboards installed and the number of lines equipped. (Columns 3 and 4.) The number of Company owned stations

served in 1928 at these various exchanges, as contained in the Company's annual reports, is also set out below, as well as the number of stations owned by the Company as of December 31, 1938, shown by the evidence in this case.

Exchange	Cost of Reproduction	Reproduction Less Depreciation	Capacity	Equipped	Company Owned Stations 1928	Company Owned Stations, Dec. 31, 1938
Baring	$7,036	$4,474	90	90	30	38
Bethany	104,369	80,749	600	540	902	868
Blythedale	16,997	11,532	150	115	99	57
Brimson	12,492	8,232	50	50	52	45
Cainsville	29,979	20,705	300	240	342	131
Cameron	139,377	102,125	1,200	1,120	1,396	924
Gilman City	33,836	24,031	300	190	331	201
Hamilton	60,479	46,744	800	580	526	407
Hartford	258	188	13	13	12	..
Jamesport	23,943	17,160	600	360	286	159
Kahoka	53,148	38,671	1,200	516	578	475
Kingston	19,749	13,483	250	200	234	57
Lawson	24,711	16,937	300	230	228	127
Memphis	41,665	29,696	600	505	448	430
Mercer	19,431	12,587	165	105	249	89
Mt. Moriah	12,940	8,618	105	70	105	59
Princeton	76,296	58,479	1,200	494	425	462
Ridgeway	34,551	24,176	300	210	307	207
Unionville	68,433	49,107	1,200	588	653	446
Wayland	23,541	16,213	135	100	211	118
Winston	11,272	7,511	250	110	120	66
			9,808	6,426	7,534	5,366

In examining the above information we note that the reproduction cost new of the property as of December 31, 1938 per station owned in 1928 varies from $78.03 to $240.23. Taking into account the fact that the investment as shown by the books continued to increase from 1928 to 1933 and has remained fairly constant since but the number of stations has decreased, so that the reproduction cost in 1938 per company owned station is more than it was in 1928, $96.89 to $346.47 per station.

The striking thing is the variation in the cost per station of the property in the various towns. It is difficult to point out the specific parts of the system that may not be required, or declare that any particular pole is too large to serve its place; but a study of the switchboards and the number of lines equipped to serve the various exchanges gives information that is helpful in an effort to determine whether or not there is an excessive amount of property in the system, and, if so, how much.

The exchange in the city of Memphis had the lowest reproduction cost per Company owned station in 1938 and apparently has experienced very little variation in its number of Company owned stations since 1928. The capacity of the switchboard is given as 600. The switchboard is equipped with 505 lines. In 1928 there were 448 company owned stations, reaching 469 in 1931, and 430 in 1938. It will also be noted that in 1938 this exchange was serving 449 switcher stations, the largest number of switcher stations served by any of the towns. Reproduction cost shown for this exchange is $41,665, whereas the repro-

duction cost for the exchange at Bethany, using 600-line capacity switchboard, is over $104,369. The total number of stations served by the two exchanges in 1938 was 879 for Memphis and 868 for Bethany. Bethany serves no swticher stations. The reproduction cost per Company owned station for Memphis is $93 and for Bethany $120.24.

A 600-line capacity board is also used at Jamesport to furnish service to 159 Company owned stations and 464 switchers, with reproduction cost of the plant $23,943, or $150.58 per Company owned station. It will also be noted that at Kahoka there was installed a 1200-line board for furnishing service to 475 Company owned stations in 1938, and 224 switcher customers, with reproduction cost of the plant $53,148.

For Cameron there is installed a 1200-line capacity board equipped with 1120 lines for furnishing service to 924 Company owned stations, with reproduction cost of the plant $139,377. In 1928 the Company had 1,396 Company owned stations in service in that city, a greater number than the line capacity of the swtichboard. At Kahoka there is also installed a 1200-line capacity switchboard equipped with 516 lines for furnishing service through 475 Company owned stations in 1938, and 578 Company owned stations in 1928, the Company owned stations not being equal to one-half of the line capacity of the switchboard. This condition is also true at Princeton where a 1200-line switchboard is installed and was used in furnishing service through 462 Company owned stations in 1938 and 425 in 1928. A very similar condition exists at Unionville where the capacity of the switchboard is 1200. The Company owned stations in 1938 is shown as 446 and in 1928 as 653.

It will also be seen that the Company found it unnecessary to install any excessive switchboard capacity in so far as the number of Company owned stations it had in 1928 were concerned to furnish service to its customers in Bethany, Brimson, Cainesville, Mercer, Cameron, Gilman City, Ridgeway, and Wayland; whereas in other instances it has considerably over twice the necessary capacity installed for furnishing the service. So it cannot be denied that with the capacity of the switchboards 30.18 per cent greater than the number of Company owned stations in 1928, the same amount of capacity for 1938 (82.84 per cent greater than the number of Company owned stations) is excessive. We note that the capacity of the switchboards installed in 1928 was 62.53 per cent greater than the number of lines with which they were equipped to furnish the service, and that the total number of lines equipped to furnish the service to 7,534 customers in 1928 was 17.24 per cent less than the number of Company owned stations. This contrast may also be noted—that in 1928 the Company had 7,534 Company owned stations with the investment shown in its annual report as $882,603; whereas in 1938 it had 5,364 Company owned stations with an investment of $1,045,435, such reported investment increasing from $117.14 per Company owned station in 1928 to $194.89 in 1938.

It may also be pointed out that on December 31, 1938, the capacity of the switchboards was 52.62 per cent

greater than the number of lines equipped in the switchboards and 82.84 per cent greater than the number of Company owned stations. We are not overlooking the fact that the Company is also furnishing service to 1,889 switcher stations, but that is offset by the fact that a number of Company owned stations are likewise served by party lines. It is common knowledge that telephone utilities make an effort to limit the number on a party line to a maximum of ten customers per line, so, without prejudice to the Company, we assume that this Company does not have more than eight customers per party line. That being true 236 lines would be required for serving the switcher lines. Allowing that and not deducting the Company owned stations served on party lines the capacity of the switchboards to furnish service to all customers is over 75 per cent greater than the number of lines required. Assuming the switchboard capacity in 1928 was as great as it was of December 31, 1938, the Company had switchboard capacity 30.18 per cent greater than the number of Company owned stations. That was the management's idea of what was necessary to furnish the service. So it is very evident the present capacity is far in excess of what the management considered the proper amount in 1928.

The owners of the property must realize that they are exposed to the same hazards of business as any other business and out of all losses and gains they experience in the business they can only expect a return on the fair value of such property as is required to serve present customers, making proper allowance for growth they can reasonably expect. "The Commission is of the opinion that the leeway to which a company is entitled in the operation of its plant should not result in an investment in plant capacity far in excess of the anticipated demands of the customers of the present and of the near future." Public Service Commission v. Kansas City Power & Light Co. (Mo 1939) 30 PUR(NS) 193, 218.

Further study of the information before the Commission shows that the Company's investment per Company owned station in 1928 was $117.14. The investment per station in 1938 was $194.89, 66.37 per cent greater than in 1928. This figure would still contain the same percentages of excess, or overbuilt property, as was provided to serve the customers the Company had in 1928. As is aptly stated by the New Jersey court of errors and appeals, in New Jersey Suburban Water Co. v. Public Utility Comrs. (1939) 123 NJL 303, 31 PUR(NS) 219, 226, 8A(2d) 350.

"Here the main was built sufficiently large to allow prosecutor to carry out its contracts to supply the needs of its earlier customers. Now it finds itself with altogether too large a plant on its hands, with only one customer, and with little, if any, prospect for future betterment of its unusual and unhealthy business status.

"The fallacy, as we see it, with prosecutor's contention is that it, in effect, makes the cost of the reproduction of its plant, irrespective of the circumstances exhibited, the conclusive test of determining its present fair value. That is not the law. Reproduction cost, like historic costs and actual costs, 'is a relevant fact which

should have appropriate consideration,' but does not furnish 'an exclusive test.' The weight to be given to reproduction costs 'is to be determined in light of the facts of the particular case.' . . . Very aptly has it been held that 'value depends upon use and is measured, or at least significantly indicated, by the profitableness of present and prospective services rendered that are just and reasonable as between the owner of and those served by the property.' . . .

"With this objective in mind, we are satisfied, notwithstanding the fact that prosecutor was necessarily obliged to use its main, double the necessary size, to serve respondent, that prosecutor is entitled only to a fair and just return based upon the fair valuation of that main, with due regard to its excessive size and with due regard to the fair and just value of the services rendered. A valuation so reached, we think, is fair and just both to the owners of, and those served by, the property."

The original cost of the Company's property suitable for use in public service, the cost of reproduction, and the cost of reproduction less depreciation of the property suitable for use in public service at December 31, 1938, including the fair market value of land, the net additions from January 1, 1939 to October 31, 1939, inclusive, and the amount found by the Commission as required for cash working capital and materials and supplies have been hereinbefore stated. Having given consideration to all the above findings and facts, and to all the information before the Commission in this case concerning all other elements of fair value of this property, including the fact that the property is integrated and coördinated, and has business attached, necessary records and trained personnel, we are of the opinion and find for the purpose of a rate base that the fair value of the property of the Middle States Utilities Company of Missouri, usable and required in furnishing service to the public as of October 31, 1939, was $575,000.

[4] From all the testimony in this case and the fact that the Company is furnishing free service over many lines, the Commission does not deem it necessary to allocate the property as between toll service and exchange service, but will allow the Company to submit for the consideration of the Commission the schedule it deems proper for securing the revenues necessary to provide the depreciation and return as we hereinafter fix. In submitting its tariffs the Company will be required to show where the various schedules of rates and toll charges will apply.

[5–7] With respect to the amount required to be set aside annually to the depreciation reserve, the engineer for the Company prepared Exhibit C, which is based on assumed lives for the property in the various accounts comprising this telephone system and indicates an average annual depreciation requirement of 4.28 per cent to be applied to the investment in physical property including general overheads. The witness presenting this exhibit recommended that not less than 4 per cent be set aside annually to make proper provision for depreciation. The Commission engineers recommended a rate of 3.25 per cent for depreciation and the use of an original

cost base of $688,680 for depreciable property. The total allowance recommended by Commission engineers was $22,400 per year for the entire property. The Commission engineers' estimate was based on a study of the Company's depreciation reserve experience for the period June 1, 1926, to December 31, 1938. In that study it was found that the percentage required to provide for the amount of additional depreciation occurring during the period was 2.56 per cent on the basis of plant account according to the Company's books, 3.23 per cent based upon the Commission engineers' original cost estimate of the entire property, or 3.40 per cent when converted to the Commission engineers' original cost of the property requiring a depreciation reserve.

The Company's estimate of 4.28 per cent was based on straight-line depreciation. In view of the fact the condition of the property was determined by the observation method rather than straight-line calculations, we are of the opinion it is erroneous to use the straight-line method in determining the amount to be set aside annually to the depreciation reserve. We are of the opinion that the Commission engineers in estimating the annual requirement gave effect to the method used in determining the accrued depreciation of the property, and the Commission engineers' estimate for the annual depreciation allowance indicates the amount that should be allowed. However, since it appears that all of the property is not required in furnishing the service, the annual allowance for the depreciation reserve to be earned out of the rates to be charged should be based on a proportionate part of the originial cost of depreciable property, and, for the purpose of testing rates, we shall allow an annual depreciation allowance of $19,000 plus 3.25 per cent of net additions of depreciable property installed after October 31, 1939.

The witness for the applicant introduced applicant's Exhibits Nos. 5 and 8, inclusive, which show the operating revenues and expenses as recorded during the period November 1, 1938 to October 31, 1939, for combined exchange and toll services of the entire company, as well as those for each exchange served. The exhibits also show the applicant's estimate of the operating results for a succeeding annual period based upon certain changes in Federal laws, methods of allocation, and the costs incurred in this case.

The Commission accountants introduced Commission's Exhibit E and stated that they submitted therein a statement of adjusted operating revenues and expenses and the resulting net revenues available for depreciation and return. The accountants further stated that they had reviewed the recorded results during the audit period and had accepted, after verification, certain of the applicant's adjustments, rejected others, and made additional adjustments, as well as preparing a separation of the adjusted operating revenues and expenses between exchange service, detailed by the various exchanges served, and toll service. The Commission witness stated that there was no income tax recorded during the period of the audit and that the accountants' exhibit included no provision therefor, but if a rate revision or other cause should require the applicant to pay income taxes in the fu-

ture the amount of such tax should be included in an estimate of future operating expenses.

The adjusted net annual revenue available for depreciation and return as submitted by the Company amounted to $45,864.65. The Commission accountants reported a net of $5,351.24 from toll service and $39,674.90 from exchange service, or a total of $45,026.14.

[8] Upon consideration of all the evidence submitted relative to operating revenues and expenses, it is our opinion that the estimated operating results submitted by the Commission accountants are reasonable and will be accepted as the amount now available for depreciation and return. We have heretofore allowed for depreciation an annual amount of $19,000, which, deducted from the sum of $45,026.14, leaves a balance of $26,026.14 available for return on $575,000, heretofore found to be fair value of the property required to furnish the service. The amount $26,026.14 represents a rate of return of 4½ per cent. We believe under the evidence that the Company is entitled to earn a greater amount than that for return. The rate of return, however, should not be greater than 6½ per cent. To earn that rate of return the Company should be permitted to submit for consideration a schedule of rates that will produce that rate of return upon $575,000, the total amount of increase in annual net revenues not to exceed $11,500.

In considering the condition which the Company now finds confronting it in the matter of a shortage in working capital, we feel that the blame for such condition may not altogether be placed at the feet of the management of the operating company. The evidence in this case shows that there are now outstanding first mortgage 6½ per cent bonds in the sum of $400,000 at par. These bonds were authorized by this Commission in 1926. The bonds date April 1, 1926, and mature April 1, 1951, and are owned by the Middle States Utilities Company of Delaware, which company through stock ownership controls the applicant Company. On October 31, 1939, the Middle States Utilities Company of Delaware was controlled by the Utilities Holding Corporation. It can be readily seen that the payment of $26,000 per year interest on these outstanding bonds is a severe drain upon the resources of this operating company. During the past several years much cheaper money has been available and practically all utilities have availed themselves of this cheaper money by refunding outstanding bond issues and preferred stock issues and have thereby accomplished large and important savings in the way of fixed charges. Apparently no effort has been made by the applicant company to refund this outstanding bond issue at a lower rate of interest. No doubt this has not been attempted because the Middle States Utilities Company of Delaware, the owner of the bonds and controller of the operating Company by virtue of owning all of the common stock, has not desired to have these bonds refunded because it would lose the 6½ per cent return which it has been enjoying through the past several years. This offers a specific and glaring example of the inexcusable practice of a holding company taxing the resources of an operating subsidiary to such an

extent as to seriously endanger the future ability of this Missouri Operating Company to serve the public. We realize that in this proceeding we cannot remedy this condition but we are impelled to make this observation for the benefit of the operating company and its management, and with the hope that a serious effort will be made immediately to remedy the situation and thereby free the operating company from the burden now imposed upon it in the way of high interest on its outstanding bond issue.

James, Chairman, Boyer, Ferguson, Wilson, and Francis, Commissioners, concur.

OKLAHOMA SUPREME COURT

Sadie E. Crawford et al.

v.

Corporation Commission et al.

[No. 29236.]

(— Okla —, 106 P(2d) 806.)

Statutes, § 6 — Validity — Sufficiency of title.

1. A statute is not to be declared unconstitutional on the ground that the subject thereof is not expressed in its title unless the title is clearly insufficient, p. 247.

Statutes, § 6 — Validity — Sufficiency of title.

2. The title of an act of the legislature may be general and need not contain an abstract of the contents of the bill. It is sufficient if the contents of the bill are referable and cognate to the subject expressed in the title, p. 247.

Statutes, § 6 — Validity — Sufficiency of title.

3. The fact that the title of an act of the legislature is broader than the matters contained in the body of the act does not render the act violative of the constitutional provisions pertaining to titles of acts of the legislature, p. 247.

Commissions, § 46 — Action as body — Decisions.

4. The members of the Corporation Commission are state officers. The Corporation Commission is a composite body. Its decisions, when concurred in by a majority of its members, constitute the act of the body as a whole, considered as a single unit, and is in effect the same as if the official authority were vested in a single person, p. 248.

Statutes, § 23 — Amendment — Effect.

5. By § 35, Art. 9, of the Constitution, Okla. St. Ann., the legislature is vested with power and authority, at any time after the second Monday

in January, 1909, from time to time, by law, to alter, amend, revise, or repeal, §§ 18 to 34, inclusive of said article, or any of them, or any amendment thereof, with the single proviso that no amendment made under the authority of said § 35, shall contravene any of the provisions of the Constitution other than said §§ 18 to 34, inclusive. Thereunder, when the legislature enacts any law which contravenes any provision contained in any of the sections of said article from 18 to 34, inclusive, or which contravene any previous act amendatory thereof, the provisions of such sections or previous amendments thereof, in conflict with such later legislative act cease to be operative to the extent of such conflict, p. 249.

Headnotes by the COURT.

Additional Headnote by the EDITORS.

Reparation, § 7 — Powers of legislature — Fees based on refunds.

6. The legislature has power and authority to require that 10 per cent of the rebates or refunds, made by a telephone company for excess charges pending appeal from a rate order, be paid into the state treasury as a fee, p. 249.

[October 22, 1940.]

APPEAL from order of Corporation Commission concerning disposition of money in the hands of the Commission paid in by a telephone company as refunds growing out of excess charges pending appeal from a rate order; order denying request for payment of entire amount to subscribers affirmed.

APPEARANCES: Phil W. Davis, Jr., of Tulsa, for plaintiffs in error; L. V. Reid, S. J. Gordon, and Sid White, all of Oklahoma City, Mac Q. Williamson, Attorney General, and Randell S. Cobb, First Assistant Attorney General, for defendants in error.

RILEY, J.: This is an appeal from an order of the Corporation Commission concerning the disposition of money in the hands of the Corporation Commission paid in by the Southwestern Bell Telephone Company as refunds growing out of exchange rates at Tulsa and Oklahoma City.

In the original rate cases the Corporation Commission ordered certain reduction in rates at Tulsa and Oklahoma City (1935) 9 PUR(NS) 113; (1936) 16 PUR(NS) 1. The telephone company appealed and gave suspending bonds for repayment of all excessive charges, which the company might collect pending the appeal. The rates fixed by the Corporation Commission were affirmed. Pending the appeal the telephone company collected in excess of the rates fixed, $226,498.71, from its subscribers in Tulsa and $118,829.26, from its Oklahoma City subscribers. The telephone company paid the amount representing such excess collections to the Corporation Commission. The Corporation Commission in turn disbursed 90 per cent of that amount to the several subscribers, but retained 10 per cent for conversion into the state treasury under the provisions of § 2, Chap. 161, S. L. 1915, § 3631, O. S. 1931, 17 Okla. Stat. Ann. § 164.

Plaintiffs in error herein, assuming

to act for themselves as interested subscribers and others similarly situated, claimed that the entire amount of the refunds collected by the Corporation Commission should be paid to the several subscribers Their claim is based upon the provisions of § 21, Art. 9, of the Constitution, Okla. Stat. Ann. To enforce that claim they commenced an original action in this court for a writ of mandamus commanding the Corporation Commission to pay such subscribers the 10 per cent of the amount so collected.

The writ was denied upon the ground that plaintiff had an adequate remedy at law by appeal from the action of the Corporation Commission. State ex rel. Crawford v. Corporation Commission (1938) 184 Okla 127, 85 P(2d) 288.

Thereafter plaintiffs in error herein acting for themselves, and purporting to act on behalf of all other persons similarly situated, filed with the Corporation Commission an application for an order directing refund by the Commission of all moneys remaining in the hands of the Commission coming to it from the Southwestern Bell Telephone Company as stated. In the application plaintiffs in error asserted that if the Corporation Commission is holding said money for conversion into the state treasury under § 2, Chap. 161, S. L. 1915, such act of Commission is without authority of law because said section of said act is violative of § 1, Amendment Art. 14, of the Constitution of the United States, and (1), § 7, Art. 2; (2) § 6, Art. 2; (3) § 24, Art. 2; (4) § 57, Art. 5; and (5) § 21 Art. 9, of the Constitution of the state of Oklahoma.

The Southwestern Bell Telephone Company disclaimed any interest in the matter because it had fully paid all for which it was liable.

The Commission found that the money amounting to $34,532.79 was held by the Commission with a view of turning it into the state treasury under the provisions of § 2, Chap. 161, S. L. 1915.

Orders were entered denying the application and directing that said fund be paid and converted into the state treasury.

Plaintiffs in error appeal.

The principal question in this case grows out of the apparent conflict between certain provisions of § 21, Art. 9, of the Constitution, and the provisions of § 2, Chap. 161, S. L. 1915.

However, the constitutionality of the entire act comprising Chap. 161, S. L. 1915, 17 Okla. Stat. Ann. §§ 163, 164, is challenged as being in violation of § 57, Art. 5, of the Constitution. We consider that question first.

[1–3] The contention made by plaintiffs in error is that the title of said act is insufficient to comply with the constitutional requirements of § 57, Art. 5, of the Constitution that every act of the legislature except general appropriation bills, General Revenue bills, and bills adopting a code, etc., shall embrace but one subject which shall be clearly expressed in its title. The particular objection relied upon is that the subject of the act is not clearly expressed in its title, in that the title does not refer to rebates, and does not mention the Corporation Commission, or refer to any charges or deductions to be made from rebates.

The title of the act is: "An act providing for fees to be charged by state officers, and declaring an emergency."

The act consists of but three sections, the third section being the emergency provision. Section 1 relates only to fees to be charged by the Corporation Commission or its secretary for making transcripts or records and is plainly covered by the title.

Section 2, of the act provides: "That for all rebates or refunds made through the intervention or agency of the Corporation Commission, a fee of 10 per cent on such rebates or refund shall be charged and deducted from such amount rebated or refunded through such intervention or agency of the Corporation Commission, and same shall be converted into the state treasury as provided by law."

A statute is not to be declared unconstitutional on the ground that the subject thereof is not expressed in its title, unless the title is clearly insufficient. State ex rel. Read v. Midwest Mut. Burial Asso. (1936) 176 Okla 468, 56 P(2d) 124; Walker v. Local Bldg. & Loan Asso. (1936) 176 Okla 168, 54 P(2d) 1078.

The title may be general and need not contain abstract of contents of the bill or specify every clause therein. It is sufficient if they are all referable and cognate to the subject expressed. Cooper v. King (1935) 171 Okla 121, 42 P(2d) 249; Oklahoma City v. Grigsby (1935) 171 Okla 23, 41 P (2d) 697; Ex parte Owen (1930) 143 Okla 8, 286 Pac 883; Oklahoma City Land & Develop. Co. v. Hare (1917) 66 Okla 190, 168 Pac 407.

The act in question relates solely to fees to be charged by the Corporation Commission or its secretary, and contains no subject matter not embraced within the title. The subject expressed in the title is broader than the matters contained in the body of the act. Under the title the legislature might have properly included fees to be charged by other state officers. The inhibition in the Constitution is against including in the act subject matter not embraced within the title. The fact that matters within the title are not included in the act does not render it violative of the Constitution. Knoxville v. Gass (1907) 119 Tenn 438, 104 SW 1084.

[4] It is contended that the title refers to fees to be charged by state officers, and that the Corporation Commission is not a state officer and, therefore, the provision does not come within the title.

The contention is without merit. There can be no doubt that Corporation Commissioners are state officers. The Commission is created by § 15, Art. 9, of the Constitution; its members are elected by the people at a general election for state officers. By § 17, Art. 9, of the Constitution they are required to subscribe to the oath of office as prescribed in the Constitution.

The Commission as such is an aggregate of state officers. Section 18a, of Art. 9, of the Constitution provides: "The Corporation Commission shall organize by electing one of its members chairman and appointing a secretary . . . . A majority of said Commission shall constitute a quorum, and the concurrence of the majority of said Commission shall be necessary to decide any question." When they act, they do so as a single composite body. The concurrence of

two or more members in the decision of a given question constitutes the act of the composite body.

The Corporation Commission, when acting within the scope of its powers and jurisdiction, is, in a measure, in the relation to the state, as the board of county commissioners is to the county.

Their acts are but the acts of the composite body. They cannot act otherwise.

The Commission is designed to be perpetuated in its existing form, as an aggregate of state officers, and not as an individual.

It is well settled that where official authority is conferred upon a Board or Commission composed of three or more members, and the law provides that a majority of the Board or Commission shall have power to act, a decision concurred in by a majority, and less than the whole number, when in regular session, is valid and constitutes the official act of the Board or Commission as a whole. 46 C. J. 1034. In such case the Board or Commission is considered as a unit. Its members are officers, but the result is the same as if the official authority be vested in a single person.

The act of charging and deducting from the amount refunded through the intervention or agency of the Corporation Commission, a fee of 10 per cent is but a single act by state officers.

[5, 6] The remaining contention is that § 2, Chap. 161, S. L. 1915, *supra,* is in conflict with and violates certain provisions of § 21, Art. 9, of the Constitution.

The relevant provision of the latter is: "Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner and through such methods of distribution as may be prescribed by the Commission, or by law."

The contention of plaintiff in error is that the mandate of § 21, Art. 9, *supra,* is that *all* the overcharges are to be paid to the subscribers, and prohibits the legislature from attempting to convert any part thereof into the state treasury.

But they overlook entirely the provision of § 35, Art. 9, of the Constitution which provides that after the second Monday in January, 1909: ". . . the legislature may, by law, from time to time, alter, amend, revise, or repeal sections from eighteen to thirty-four, inclusive, of this article, or any of them, or any amendments thereof: Provided, That no amendment made under authority of this section shall contravene the provisions of any part of this Constitution other than the said sections last above referred to or any such amendments thereof."

Section 21, of Art. 9, of the Constitution, is one of the sections which the legislature is authorized by law to alter, amend, revise, or repeal. If the provisions of § 2, of the Act of 1915, *supra,* are in conflict with the part of § 21, Art. 9, of the Constitution quoted above, then a repeal is effected by the enactment of the statute.

Section 21 of Art. 9, of the Constitution as originally written, as shown by the part thereof quoted above, required that all amounts which the appealing company may have collected

pending the appeal in excess of that authorized by the final decision should be promptly refunded *by the company* to the parties entitled thereto, etc.

By Chap. 10, S. L. 1913, 17 Okla Stat. Ann. § 121 et seq., the Corporation Commission was vested with the power of a court of record to determine the amount of refund due, and to whom the overcharge should be paid, and upon ascertaining the amount of overcharge, the Corporation Commission was given authority to render judgment therefor, if necessary, to insure the prompt payment thereof to the Commission. This was a change in the law which theretofore required payment by the company to the persons entitled thereto. The Act of 1913 goes further and provides that such judgment shall be a lien upon the property of the public service corporation, person or firm, and shall be collected in the same manner as fines and penalties imposed by the Corporation Commission are authorized by law to be collected, and when collected shall be paid immediately by the Commission to the parties entitled thereto.

The Act of 1913, therefore, departs in at least two particulars from the provisions of § 21, Art. 9, of the Constitution. Said act on its face does not purport to be an amendment of § 21, Art. 9, of the Constitution, or any of the other sections of said article that could be amended by statute. No mention is made in the title or body of the Act of 1913, *supra*, of any of the sections of Art. 9, of the Constitution between §§ 18 and 34, inclusive.

In Pioneer Teleph. & Teleg. Co. v. State (1914) 40 Okla 417, 138 Pac 1033, the Act of 1913, *supra*, was upheld.

In Russell v. Walker (1932) 160 Okla 145, 15 P(2d) 114, it is held: "By the provisions of § 35, Art. 9, of the Constitution of Oklahoma, the legislature was given the power to alter, amend, revise, or repeal sections from 18 to 34, inclusive, of Art. 9 of the Constitution, after the second Monday in January, 1909, there being but one limitation of that power, which is that no amendment made under that authority shall contravene the provisions of any part of the Constitution other than the sections last above referred to, of any such amendments thereof."

Therefore, when the legislature enacted § 2, of Chap. 10, S. L. 1913, that part of § 21, Art. 9, of the Constitution which required all rebates or refunds to be paid by the company to the persons entitled thereto became inoperative and thereafter payment of the total amount of rebates or refunds are required to be paid by the company to the Commission and by it distributed to persons entitled thereto.

Upon enactment by the legislature of § 2, Chap. 161, S. L. 1915, that part of § 2, Chap. 10, S. L. 1913, which provided that when the total amount of the rebates or refunds was collected by the Commission should be paid by the Commission to the parties to whom it was due, likewise became inoperative to the extent that 10 per cent of such amount should be charged by the Commission as a fee and converted into the state treasury.

The power and authority of the legislature to require that 10 per cent of the rebates or refunds be paid into the state treasury as a fee is well settled.

In Charlotte, C. & A. R. Co. v. Gibbes (1892) 142 US 386, 395, 35 L ed 1051, 12 S Ct 255, 258, it is said: "In such instances, where the interests of the public and of individuals are blended in any work or service imposed by law, whether the cost shall be thrown entirely upon the individuals or upon the state, or be apportioned between them, is matter of legislative direction."

The legislature has for many years appropriated large sums of money to defray the expenses of the Corporation Commission in investigating and adjusting rates charged by the public utility companies within the state. The companies are required by law to pay all expenses incurred by the Corporation Commission in checking refunds, determining to whom they belong and delivering same to the parties entitled thereto. As to other expenses incurred in making investigation, conducting hearings, appeals, etc., in proceedings involving rates charged by utility companies, the law as enacted by the legislature requires the parties benefited, where appeals are prosecuted and rates are suspended pending appeal, to bear a part of the expenses incurred by the state. This being purely a matter of legislative direction, and within the power of the legislature, it follows that said act does not violate any of the other provisions of the Constitution of the state, and does not violate the provisions of the Fourteenth Amendment of the Constitution of the United States.

The order of the Corporation Commission is affirmed.

Bayless, C. J., Welch, V. C. J., and Osborn, Gibson, Hurst, Davison, and Neff, JJ., concur.

Corn, absent.

PENNSYLVANIA COURT OF COMMON PLEAS
OF DAUPHIN COUNTY

Bell Telephone Company of Pennsylvania

v.

Dennis J. Driscoll et al.

[Equity Docket No. 1473, Commonwealth Docket No. 227.]

Commissions, § 3 — Delegated powers — Legislative standards.

1. A Commission, no matter how high its motives may be, may not constitutionally be vested with power to fix its own standards, since that is a duty of the legislature which it may not delegate, although it may delegate the duty to apply the standards to specific cases or to determine facts to which a standard applies, p. 252.

Intercorporate relations, § 5 — Delegation of powers — Approval of contracts — Absence of standard.

2. A grant of power to a legislative body to decide which contracts between

affiliated interests should be approved and which should not would be an unconstitutional delegation of legislative authority, in the absence of a proper standard to guide it, p. 252.

Commissions, § 3 — Delegated powers — Legislative standards — Public interest.

3. Public interest is not a legal standard for the guidance of the Commission in the performance of delegated duties when the term "public interest" is undefined and unsupported by criteria elsewhere in the statute, p. 253.

Intercorporate relations, § 14.2 — Commission approval of contracts — Public interest.

4. The public interest referred to in a statute providing for Commission approval of any contract with an affiliated interest does not mean the interest that the users of a public utility service have in rates, discrimination, and adequacy of service, where discrimination and inadequacy of service may be remedied without recourse to this statute and rates are not affected by the contracts between affiliates and where another statute provides that the Commission shall not be bound in fixing rates to take into consideration an unreasonable payment made by any public utility under any contract with an affiliated interest, p. 253.

[October 28, 1940.]

EXCEPTIONS *to opinion of court handed down in 34 PUR (NS) 98; exceptions sustained, conclusions of law set aside, new conclusions adopted, and injunction granted against enforcement of statute relating to Commission approval of contracts between affiliates.*

By the CHANCELLOR: Exceptions have been filed to the opinion of this court handed down on May 6, 1940, 34 PUR(NS) 98. It is contended that our construction of § 702 of the Act of 1938, P. L. 44, is error. The relevant parts of this section may be outlined as follows:

Section 702. No public utility . . . shall, without the prior approval of the Commission—

(a) Make effective or modify any contract with an affiliated interest, or

(b) By way of donation, give to, or receive from, an affiliated interest, any property, money, security, right, or thing.

There are two provisos to this section. The first is inapplicable here. The second covers revocations of approvals already given in two classes of contracts, namely: (1) loans; and (2) continuing or serial transactions. These revocations must be based upon a finding of public interest.

[1, 2] There is no expressed requirement that the approval of contracts or donations, mentioned in (a) and (b) above, be based upon a finding of public interest. In fact, there is no standard fixed to guide the Commission in its approval or disapproval of such contracts. It follows that the action of the Commission would be predicated upon a standard fixed by itself. The right to fix a standard involves the right to change the standard. No matter how high the motives of the Commission may be, it may not constitutionally be vested with

the power to fix its own standards. That is the duty of the legislature which it may not delegate. It may delegate the duty to apply the standards to specific cases or to determine facts to which the standard applies. But it cannot delegate discretion to establish a standard which shall be the basis for the approval or rejection of contracts. This is a well-known principle which needs little citation of authorities to sustain it. We may, however, refer to the opinion of the supreme court, in York R. Co. v. Driscoll (1938) 331 Pa 193, 197, 24 PUR (NS) 405, 408, 200 Atl 864, where it is said:

"We are of the opinion that the Commission has no authority to act where existing bonds are to be extended, because § 601(a) of the act purporting to give it this power is unconstitutional. The section provides that the Commission may exempt public utilities as to any class of securities. Principles prohibiting the delegation of legislative power forbid the grant to a legislative body of the power to prescribe which securities come within the act and which do not. National Transit Co. v. Boardman (1938) 328 Pa 450, 197 Atl 239, and cases there cited. Such a power would enable the Commission to nullify the section. This is not permissible under our constitutional provisions: Holgate Bros. Co. v. Bashore (1938) 331 Pa 255, 200 Atl 672."

We think it clear that a grant of power to a legislative body to decide which contracts between affiliated interests should be approved and which should not, would likewise be an unconstitutional delegation of legislative authority, in the absence of a proper standard to guide it.

It will be observed that while § 702 requires the prior approval of all contracts and donations between affiliated interests, before they become effective, that the second proviso authorizes revocations in only two types of cases, namely: loans and continuing or serial transactions. Consequently, even though it should be held that public interest is a proper basis for revocation of approval in those two instances, and that, by implication, public interest was the basis for approval, nevertheless, there are other types of contracts requiring approval to which the standard of public interest would not apply. That is the situation with which we are here dealing. The contracts involved are not for loans or continuing or serial transactions. Hence, the standard of public interest cannot in any event, be imputed or inferred as the basis of approval.

[3, 4] We will next consider whether "public interest" as used in this section is, in any event, a proper standard. The act does not define public interest. The Commission is free to reach its own conclusion as to the meaning of the term. One Commission might reach one conclusion and a later Commission a different one. Or the same Commission could change its mind so that public interest would have a variable meaning dependent solely upon the current thought of the Commissioners. This makes the meaning of the term depend upon the vagaries of the human mind, influenced by personal views and beliefs, and unrestrained by any legal inhibitions. Public interest thus becomes what the Commission thinks it is, and

not what the law says it is. When thus considered, it is obvious that "public interest" is not a legal standard. It is no answer to say that the object of the section, or of the law itself, is to promote public interest, for that is patently the object of all laws. No doubt the legislature, in enacting every law, does so in the belief that it is acting for the public interest. We think it obligatory upon the legislature to establish a standard for the guidance of the Commission in the performance of its duty. We likewise think that "public interest" undefined is not a proper, suitable, or legal standard.

The question of standards has been before the courts on a number of occasions. In Panama Refining Co. v. Ryan (1935) 293 US 388, 79 L ed 446, 55 S Ct 241, it was held that an attempt by Congress to invest the President with authority to prohibit the transportation of petroleum in interstate and foreign commerce was an unlawful delegation of legislative authority, for the reason that Congress had nowhere in the statute declared or indicated any policy or standard to guide or limit the President in the exercise of such authority. In Schechter Poultry Corp. v. United States (1935) 295 US 495, 541, 79 L ed 1570, 55 S Ct 837, 97 ALR 947, it was held that Congress could not delegate to the President the power to establish codes of fair competition. It was there said:

"Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them . . . the discretion of the President in approving or prescribing codes . . . is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power."

These cases would seem to indicate that legislative authority may not be delegated in the absence of a standard to guide the exercise thereof. These standards, however, need not necessarily be set forth in the same section which confers the power but may be gleaned from the whole act. If the legislative body has declared its policy and evidenced its intent, that is the criteria upon which the power may be exercised. This is shown by such cases as New York Central Securities Corp. v. United States (1932) 287 US 12, 77 L ed 138, 53 S Ct 45; Texas v. United States (1934) 292 US 522, 78 L ed 1402, 54 S Ct 819, and Federal Radio Commission v. Nelson Bros. Bond & Mortg. Co. 289 US 266, 77 L ed 1166, PUR1933D 465, 53 S Ct 627. The first of these involved the power of the Commission to authorize the acquisition of one carrier by another upon a finding that "public interest" would be promoted thereby. The question arose under § 5(2) of the Interstate Commerce Act. The court in holding that there was no unlawful delegation of legislative authority, used the following language:

"Appellant insists that the delegation of authority to the Commission is invalid, because the stated criterion is uncertain. That criterion is the

'public interest.' It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of the act, the requirements it imposes, and the context of the provision in question show the contrary. Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act [February 28] 1920 [41 Stat. at L. 456, Chap. 91, 49 USCA] was designed better to assure adequacy in transportation service. This court, in New England Divisions Case (Akron, C. & Y. R. Co. v. United States [1923]) 261 US 184, 189, 67 L ed 605, 43 S Ct 270 adverted to that purpose, which was found to be expressed in unequivocal language; 'to attain it, new rights, new obligations, new machinery were created.' The court directed attention to various provisions having this effect, and to the criteria which the statute had established in referring to 'the transportation needs of the public' 'the necessity of enlarging transportation facilities,' and the measures which would 'best promote the service in the interest of the public and the commerce of the people.' Id. p. 189, note. See, also Texas & P. R. Co. v. Gulf, C. & S. F. R. Co. (1926) 270 US 266, 277, 70 L ed 578, 46 S Ct 263. The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred." (287 US at p. 24.)

The Texas and Federal Radio Commission cases, referred to above are to the same effect.

We cannot find in the Public Utility Act any criteria of the character mentioned by the United States Supreme Court. The Utility Act covers many diverse and unrelated subjects. We cannot see how rates, discrimination, or adequacy of service are affected by the provisions of § 702 of the act. Discrimination and inadequacy of service may be remedied without recourse to § 702, and rates are not affected by the contracts between affiliates. Section 705 provides:

"The Commission shall not be bound in fixing the rates of any public utility, to take into consideration any unreasonable payment made by such public utility under any contract with an affiliated interest."

This is so even though the Commission has itself approved the contract. As we view the matter, therefore, the public interest referred to in § 702, does not mean the interest that the users of a public utility service have in rates, discrimination, and adequacy of service.

It is our conclusion that the term "public interest" undefined and unsupported by criteria elsewhere in the act, is not a proper standard to guide the Commission in the performance of its duty in approving or refusing to approve contracts between affiliated interests.

In view of what we have already said, we deem it unnecessary to discuss whether the penalties imposed for violations of the act are such as to deprive the plaintiff of the equal protection of the laws or of its property, without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. We have not overlooked the fact that § 702 may deprive the plaintiff of the equal protection of the law by limiting its freedom to contract with affiliates. We have likewise considered the invasion of the right of management, the interference with property rights, and the taking of property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States and Art. I, § 1, of the Constitution of Pennsylvania. We feel that there is considerable merit in these contentions, and that the plaintiff's rights may be thus invaded. Since, however, we have found that § 702 unconstitutionally delegates legislative authority to the Commission, we will refrain from discussing further these aspects of the case.

The exceptions of the plaintiff are sustained. In our former opinion we refused parts of the plaintiff's suggested finding of fact No. 19, and all of suggested findings Nos. 20, 24, 25, and 26. We now set aside our refusals in these respects, reaffirm our former findings, and, in addition, adopt as the findings of fact by the court the plaintiff's suggested findings Nos. 19, 20, 24, 25, and 26. This means that we have adopted as the findings of fact by the court all of the plaintiff's suggested findings of fact, with some slight alterations in No. 18, to which the plaintiff has not excepted.

We likewise set aside the conclusions of law made by us in our former opinion. We now adopt as the conclusions of law by the court the following plaintiff's suggestions for conclusions of law, to wit: plaintiff's suggestions Nos. 1, 3, 4, and 6. We refuse plaintiff's suggested conclusions of law, Nos. 2 and 5, for the reason that the court has not considered, in its opinion, these two aspects of the case.

And now, to wit: October 28, 1940, it is *ordered, adjudged,* and *decreed* that the defendants, Dennis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, constituting the Public Utility Commission of the commonwealth of Pennsylvania, and Claude T. Reno, attorney general of the commonwealth of Pennsylvania, or their successors and associates in office, be and the same are hereby permanently enjoined and restrained from enforcing against the plaintiff, its officers, agents, servants, or employees, any of the provisions of § 702 of the Public Utility Law of 1937, P. L. 1053, as amended by the Act of September 28, 1938, P. L. 44.

The prothonotary is directed to forthwith inform the parties hereto, or their counsel, of this decree.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.

$50,000,000 Program Planned By Philadelphia Electric

THE Philadelphia Electric Company will spend $50,000,000 for increased power facilities in 1941, it was announced recently. This is the largest volume of construction work in the history of the company.

Construction will include a new generating station on the Delaware River in South Philadelphia, and additions to substations and transmission lines in Chester, Willow Grove and other localities.

The program will boost the company's generating capacity to more than 1,500,000 kilowatts, enough power to feed a belt of light around the earth with a separate bulb every three and three-quarters feet.

Largest single item in the 1941 budget, is the new Southwark generating station in South Philadelphia. Plans call for an ultimate capacity of 600,000 kilowatts with the first turbo-generator unit in service in 1944.

Scheduled for completion next year is the extension of the Chester station, where an 80,000-kilowatt generator will be installed and where major improvements in the high-tension switch-house are to be made.

This is in addition to a new 50,000-kilowatt generator now being installed at the Chester plant, which is scheduled to begin turning over this spring.

Included among the projects for the coming year are additions and improvements to the transmission and distribution system amounting to $12,000,000.

Expansion of production and distribution facilities of the gas department also are indicated. This is necessary because of additional industrial requirements resulting from the national defense program, new building construction and increased use of gas for domestic house heating. The cost will reach an estimated $1,400,000. Of this total, $750,000 will provide for enlarged production capacity in the gas generating plants at Chester and West Conshohocken. Work will start on the construction program in these plants early this spring.

In order to meet the expanding needs for central plant steam, a new boiler at the Willow steam plant has been authorized and is scheduled for operation in the fall of 1942. The cost of this installation, with extensions to existing mains to connect additional load, will approach $500,000.

Supplementing the construction program for the Philadelphia Electric Company itself, more than $2,000,000 has been authorized for subsidiary companies, among the more important items being the installation of a new 20,000-kilowatt high-pressure turbo-generator at Deepwater station, scheduled for service in 1942.

Connelly Plans to Increase Production Facilities

CONNELLY Iron Sponge & Governor Company, Chicago, Illinois, and Elizabeth, New Jersey, announces extensive additions and improvements in its production facilities for the manufacture of governors, regulators, back pressure valves and other devices used in the production, distribution, control and consumption of manufactured and natural gas. Installation of new equipment and acquiring of augmented plant facilities is reportedly due to the increase of business which has resulted largely from changes in design and construction of the Connelly line of products made by the engineering department. In addition, contracts have been let for building a new laboratory and enlarged office space necessitated by increased demands on the gas purification division.

Extensive plant facilities are maintained by Connelly both at Chicago, Illinois, and Elizabeth, New Jersey.

"Spirakore" Transformers up to 500 KVA Now Available

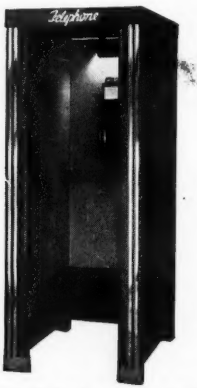
GENERAL Electric's distribution transformer of revolutionary design, the "Spirakore," is now available in single-phase ratings up to and including 500 kva, according to L. R. Brown, manager of the company's Transformer Division at Pittsfield, Mass. Many of the larger ratings are already in production and ready for delivery.

Citing the extension of the Spirakore design as another significant advance in the transformer art, Mr. Brown pointed out that market levels on the entire line of distribution transformers average from 15 to 20 per cent lower today than they were only three years ago, when the Spirakore transformer was first announced.

Burgess Battery Adds Two New Acousti-Booths to Line

Two new acoustical telephone booths, especially adapted for use in hotels, banks, stores, and other public telephone installations, have just been added to the line of Acousti-Booths offered by Burgess Battery Company, 530 W. Huron St., Chicago.

Like other Burgess Acousti-Booths, the new models have no doors, yet they give complete quiet and privacy. The walls and ceiling of the booth are designed like modern auditoriums and radio stations—they are acoustically lined to blot up stray noise and create a "zone of quiet" within the booth.



Model 205 Telephone Acousti-Booth

The Acousti-Booth is convenient to use, because there are no complicated folding doors to cause interference, and ample room is provided inside the booth. The doorless construction allows better ventilation than is possible in ordinary, enclosed booths, according to the manufacturer.

Illustrated bulletin with prices will be sent on request.

Insulation for Street Lights

A NEW heat-insulating hood for street lights has been announced by the General Electric Company. It is designed to increase the life of cable used within the hood and provide better cable performance by protecting it from temperatures in excess of 75 C. These high temperatures have been encountered in luminaires with metal hoods and lamps larger than 4,000 lumens, and are considered certain to cause deterioration of cable insulation, possibly to the point of premature electrical breakdown.

A slip-fitter arrangement, which allows mounting and wiring from the side of the luminaire hood, plus an internal wet-process porcelain insulator through which the conductors pass, avoid exposure of the vulnerable cable insulation to excessive temperature, thus assuring normal life and reliability of the insulation.

Connecticut Utilities Will Spend $35,000,000

MAJOR public utility companies of Connecticut will spend approximately $35,100,000 for plant improvements and extensions during the coming year. The largest budget is that of the Southern New England Telephone Company which has projects aggregating $9,350,000. Connecticut Light & Power will carry out a $2,900,000 program and complete $4,600,000 of another work previously announced.

United Illuminating Company will finish $6,000,000 of plant improvement already under way and will have an additional $1,000,000 for betterments and extensions. Hartford Electric Light Company's budget will be $4,000,000. The Connecticut Power Company budget will run to approximately $3,000,000.

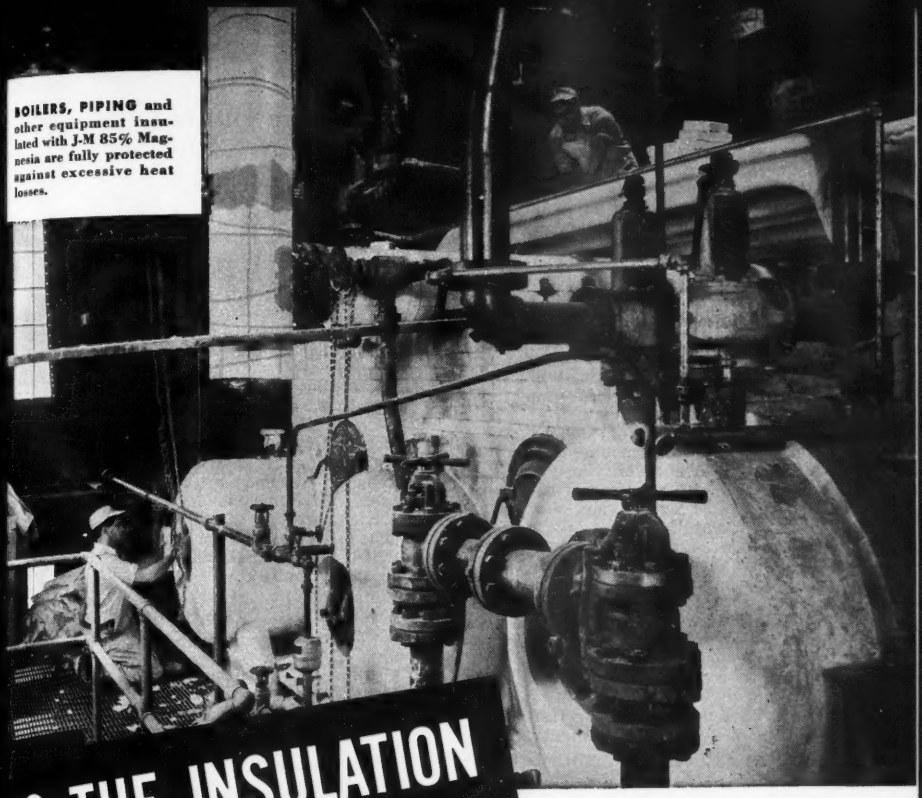
The biggest water project is that of the Metropolitan Water District of Hartford, whose budget amounts to approximately $2,363,000. Other budgets are estimated as follows: Bridgeport Hydraulic Company $1,150,000; Hartford Gas $250,000; New Haven Water Company $150,000; Bridgeport Gas Light Company $150,000; and New Haven Gas Light Company $163,300.

Mark Sensing Reproducing Punch Introduced by I.B.M.

A MACHINE which automatically punches data in tabulating machine cards in conformity with pencil markings on the card has been added by International Business Machines Corporation to its line of electric punched card accounting machines, it was announced recently. The machine utilizes the principle of the electrical conductivity of a soft pencil mark.

Termed by the company the greatest advance in the development of punched card accounting in recent years, the mark sensing reproducing punch provides, in effect, that the person writing an original record in pencil can simultaneously provide for the punching of all or part of the information involved without the use of any equipment other than the pencil itself. This provision for punching at the point of original information instead of in the office both simplifies and accelerates office routine, it was stated.

Some of the applications for which the new method is intended are the completion of ma-



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terial requisition cards by marking quantities withdrawn, completion of public utility bills by having meter readers mark their readings for punching, etc.; the distribution of time worked by a man or group of men to various job numbers, the taking of physical inventories in which quantities are marked on the floor and costs are marked in the cost department; completing labor vouchers for production control by marking the man-number and pieces to be paid for; completion of billing cards by marking quantities shipped.

The machine has capacity for sensing and punching ten columns on one run, and double-marked or unmarked columns will cause the machine to stop, thereby informing the operator of an error and thus verifying its own punching.

The company also announced the introduction of an alphabetic verifying punch so that alphabetic as well as numeric data punched in a card can be verified, and also providing, by means of a card inserted in a master-card rack control of several conditions which would require that verification be modified. It is of particular use in applications requiring a high degree of accuracy in the punching of names, such as insurance policy records, as well as in applications requiring the preparation of address cards.

When an error is detected a red light is shown and the machine locks to prevent further operation until the error is rectified.

M. M. & M. Announce Factory Expansion

In order to keep pace with the increased demand for products of its manufacture, Manning, Maxwell & Moore, Inc., Bridgeport, Connecticut, makers of pressure gauges, safety valves, industrial thermometers, and globe valves, announce extensive factory expansion.

At their Bridgeport plant, a sixth floor has just been added, and about 50,000 square feet of space leased across the street. The Hancock Valve Division of this concern, whose plant is located in Boston, has secured an additional four-story factory that will be devoted exclusively to the manufacture of Hancock Steel Valves.

M. M. & M. state that these expansions in space, along with similar additions in manufacturing equipment, will enable them to keep up with increasing demands for their products.

Duke Power to Install Another G-E Turbine-Generator

Construction of a 40,000-kilowatt turbine-generator is being started by General Electric for the Duke Power Company as part of a huge expansion program to keep pace with defense needs. The new unit will go into the company's Buck Station, near Spencer, N. C., and will entail expenditures totalling three million dollars, exclusive of necessary transmission lines and additional distribution facilities.

Baltimore Utility to Expand Power Facilities

The 1941 construction budget of the Consolidated Gas Electric Light and Power Company of Baltimore provides for an estimated expenditure of $8,655,811 for additional new facilities and for the replacement of old facilities.

Supplementing this sum, there is a carry-over of $3,899,545 from the 1940 construction budget for construction work started last year and not yet completed. These expenditures apply principally to the Westport electric power station, whose capacity is being expanded substantially.

The expenditures for additional facilities and replacements pertain to many parts of the property, comprising the systems serving the company's customers with gas, electricity and steam. They include further expansion in electric generating capacity.

The estimated total construction expenditure for 1941 will be $3,895,000 greater than the actual outlay for 1940.

Wood Pole Standards Proposed As American Standards

The ASA Telephone Group has recommended to the American Standards Association that six American Tentative Standards for wood poles be advanced to the status of American Standards. These standards cover: Northern White Cedar Poles (05bl-1931); Western Red Cedar Poles (05cl-1931); Chestnut Poles (05dl-1931); Southern Pine Poles (05el-1931); Lodgepole Pine Poles (05fl-1933); Douglas Fir Poles (05gl- 1933).

This action was taken in response to the policy of the ASA Standards Council to reconsider all tentative standards and to either advance them to American Standards or to drop them from the list of approved standards.

The Okonite Co. Opens New Office in Birmingham

F. C. Jones, president of The Okonite Company, (manufacturers of insulated wires, cables and splicing tapes) recently announced the opening of the company's sixteenth district office on January 15, 1941 at Birmingham, Alabama, to serve the company's rapidly growing business in the industrial South.

Dewey A. White, formerly sales engineer in the company's Atlanta office has been appointed manager of the new office. Mr. White, who has been connected with Okonite for seventeen years, will have included in his South Central Territory the states of Tennessee, Alabama, Mississippi and Louisiana. Mr. White will handle insulated wires and cables manufactured by The Okonite Company, The Okonite-Callender Cable Co., Inc., and the Hazard Insulated Wire Works Division.

The South Atlantic territory (North Carolina, South Carolina, Georgia and Florida)

will continue to be handled by Geo. N. Brown, manager of the company's office at 1606 Rhodes-Haverty Building, Atlanta, Ga.

On January 3rd, Okonite's St. Louis, Missouri office was moved from the Ambassador Building to larger quarters at 1406 Shell Building. Robert E. Sontag, St. Louis manager, remains in charge.

Alabama Pwr. to Spend $6,500,000 On Expansion

ALABAMA Power Company will spend approximately 6½ million dollars for construction during 1941, according to Thomas W. Martin, president. About one-third of this sum will be for the completion of the steam plant now under construction at Chickasaw, near Mobile, and expected to be in operation in May or June.

Nearly half a million dollars will be spent for the construction of new rural lines and over 2 million dollars will be used for extensions and improvements to existing rural and distribution facilities. Three hundred thousand dollars will be devoted to transmission line additions and improvements.

The remainder of the construction program will be devoted to the improvement of service in various localities where there has been an increase in the use of electric service or where an increase seems likely within the year. A number of additional substations will be built under this phase of the construction program.

President Martin stated that this large non-emergency expenditure is in keeping with the company's long-standing policy of maintaining and extending its facilities to assure continuing dependable electric service.

Gas-Carburizing Furnace

A NEW gas-carburizing electric furnace for case-hardening steel parts has been announced by the General Electric Company, Schenectady, N. Y. This new furnace offers outstanding advantages over other methods of carburization according to the manufacturer. A hydrocarbon gas, circulated rapidly through the charge, is used instead of a solid carbon compound as a source of carbon for the carburizing process. Since the gas is uniformly distributed in the furnace, a "case" of uniform thickness forms on every surface, regardless of position in the load. In addition, like all electrically heated devices, the furnace can be controlled automatically to reproduce any carburizing treatment, time after time, on a production-line basis.

Operating data show that savings as high as 75 and 80 per cent are made under some conditions when this gas-carburizing furnace is substituted for older methods of carburizing. These savings are possible because of the shortened carburizing cycle, the elimination of packing material and the improvement in quality and uniformity of carburized parts obtained by the new furnace.

Other advantages brought about by the use of the new gas-carburizing furnace include elimination of the messy, time-consuming, and costly process of packing and unpacking the carbon compound; and substitution of lightweight alloy trays or baskets for the heavy, costly cast pots necessary when the packing process is used.

Square D Controller Division In New Milwaukee Plant

THE Square D Company has transferred its Milwaukee offices and all production of the Industrial Controller Division, to a new 125,000 square foot plant on North Richards Street at Capitol Drive, where production capacity has been increased 50 per cent.

A modern power distribution system which utilizes the company's own products to provide the highest possible degree of flexibility and efficiency is one outstanding feature of the new plant, which was designed and built by The Austin Company. The manufacturing area, laid out for straight-line production in two 60-foot monitor bays and three 40-foot low bays with columns on 40-foot centers lengthwise of the building, extends a distance of 380 feet beyond the offices.

Forty-two hundred lineal feet of square-duct has been used throughout the structure, including 500 feet in the office building where one installation serves the telephone system and another the lighting connections and office equipment.

Use of the square-duct simplified distribution of power to more than 275 individual motor-driven machines. The ducts are at a uniform height of 13 feet, so located that in no instance is the distance from the duct to any individual motor more than 25 feet, which makes it possible to hold the size of copper required to one-third the size of the main cable.

Generous daylight is provided through the 6-foot 7-inch runs of monitor sash and 10-foot 3½-inch runs of continuous side wall sash which completely surround the plant, while from 25 to 35 foot-candles of light is provided for night work by 500 watt Mazda lamps in standard RLM reflectors on 12 x 13 foot centers. Vapor-proof fixtures are used in the enameling shop.

Equipment Literature

Pressure-Creosoted Laminex Culverts

Prefabricated culverts which can be erected by unskilled field labor and which withstand loads in excess of 20,000 pounds are described in the booklet "Pressure-Creosoted Laminex Culverts" (Form G-16) published by Koppers Company, Wood Preserving Division, Pittsburgh.

These culverts are made of laminated, pressure-creosoted wood, with sections interlocking cornerwise and lengthwise to form a solid, unified construction. Drawings and photos show how they are assembled.

The booklet gives their advantages and use for conduit for pipe lines, waste and storm

Equipment Literature (cont'd)

sewers, railroads, highways and airport drainage. A table lists sizes obtainable. Details of the lumber and the preservative treatment used are given.

Voltage Regulator

Allis-Chalmers Mfg. Company, Milwaukee, Wisconsin, has for distribution, Bulletin B-6126 on their completely new dry type air-cooled regulator for feeder voltage regulation. It is the first literature issued and covers ratings of 36 kva to 96 kva, 2400 volts, single phase. Besides outlining advantages of safety, reliability and low maintenance for indoor substations, it gives an extensive, well illustrated description of how this type CFR air-cooled regulator operates.

G-E Bulletins

The following publications have recently been issued by General Electric Company: G-E Metal-Clad Switchgear, Type MI-6 (GEA-2499A); High-Speed Induction Motors (GEA-978B); Tellurium Portable Cable (GEA-1918B); How to Maintain D-C Motors (GEA-3488); Why FH Cubicles? (GEA-2599); New G-E Gas-Carburizing Electric Furnace (GEA-3523).

Automatic Lubricator

Ace Lubricating Equipment Company, Inc., Detroit, Mich., has just issued a bulletin describing the Ace lubricator. This new automatic lubricator for automotive and industrial use replaces all types of grease fittings and grease and oil cups. The Ace lubricator is filled with a grease gun, indicates when it is empty, is easily cleaned and can be adjusted to suit bearing pressure.

Rocking Contact Voltage Regulators

Allis-Chalmers Mfg. Company, Milwaukee, Wisconsin, has issued Bulletin B-6137 on their type VD Rocking Contact Voltage Regulators. It is of vital interest to those engineers having applications involving control of voltage, current, speed and tension in connection with direct current machines. This descriptive bulletin, well illustrated by photographs and wiring diagrams, shows how these regulators may be applied to direct current problems in steel mills, paper mills, electro-plating and chemical plants, and in the process industries.

Personals

General Electric

John P. Rainbault was recently named manager of the air conditioning and commercial refrigeration department of the General Electric Company by H. L. Andrews, vice president.

Formerly manager of the company's electric clock section in Bridgeport, Conn., Mr. Rainbault succeeded Stuart M. Crocker, who was named a vice president concerned with customer relations. Mr. Rainbault's headquarters are in Bloomfield, N. J.

F. E. Fairman, Jr. has been appointed assistant manager of the Switchgear Division, Central Station Department, Philadelphia. J. D. Hoffman, also of Philadelphia, has been promoted to manager of sales of the equipment section in the Switchgear Division, at Philadelphia, taking over the work formerly handled by Mr. Fairman.

T. A. Abbott has been appointed manager of sales, Meter Division, it has been announced by F. G. Vaughen, manager, General Electric Meter Division. The new appointment was effective January 1, 1941.

Chaplin-Fulton Mfg. Co.

Alex M. Brooks has been elected president of the Chaplin-Fulton Manufacturing Company, Pittsburgh, Pa. The office has been vacant since last July and was formerly held by the late W. S. Ralston.

Mr. Brooks is a grandson of M. B. Chaplin, one of the founders of the company. The new president joined the firm in 1930, was made treasurer in 1934 and was elected vice president in 1937.

A.G.A.E.M.

John E. Bogan has been appointed sales promotion manager to direct the CP (Certified Performance) Gas Range Program for the Association of Gas Appliance and Equipment Manufacturers as of February 1st. He succeeds R. S. Agee.

Prior to joining the association two years ago, Mr. Bogan was director of sales for the Central Illinois Light Company, Peoria, Ill. and had been associated with that company in various capacities for more than fifteen years. Because of his knowledge of advertising and dealer coördination he served on several committees of the Illinois Public Utilities Association.

Acting in the capacity of CP Gas Range field sales counsellor for the past two years, Mr. Bogan has travelled more than 150,000 miles throughout the United States conferring with dealers and gas company executives. He is a well known authority on marketing methods and sales promotion and has addressed hundreds of sales groups in his extensive travels.

In accepting his new position Mr. Bogan stated that "The CP gas range program sponsored by more than 20 leading gas range manufacturers has set up a budget for 1941 of $115,000 for promotion and advertising, tying in coöperatively with the American Gas Association's $450,000 advertising campaign."

Ruud Mfg. Co.

C. A. Brudin of the Ruud Manufacturing Co., Pittsburgh, Pa., is district manager at Baltimore. He succeeds E. P. Game who has been transferred to Charlotte, N. C. Formerly Mr. Brudin was in charge of Ruud's Washington branch.

Q. Why are Dodge Job-Rated Trucks so economical to operate and maintain?

A. It's all a matter of quality · · · plus trucks that fit the job!

Q. ***What features of Dodge Job-Rated trucks assure high gas mileage on your job?***

A. **Each truck has the right one of six truck engines for correct power with economy. High compression design saves on gas. By-pass thermostat reduces choking, saves fuel. Valve seat inserts and 4-ring pistons maintain compression.**

Q. ***What Dodge Job-Rated truck engine features assure top oil economy?***

A. **Full-length water jackets guard against excessive oil-burning temperatures. Crankcase ventilation prevents oil dilution. Two oil control rings, plus two compression rings per piston, prevent oil waste. Oil bath air cleaner contributes to longer oil life.**

Q. ***What Dodge high quality engine design features reduce truck upkeep cost?***

A. **Precision-type engine bearings give longer life and low replacement cost. Superfinish on crankshaft practically eliminates wear. Water distributing tube maintains even operating temperature. Exhaust valve seat inserts reduce valve grinding.**

Q. ***What Dodge high quality chassis features reduce upkeep cost?***

A. **Carburized transmission gears—their extremely hard surfaces resist wear. Sealed roller bearing universal joints greatly minimize friction and wear. Complete roller-bearing-equipped rear axles materially reduce friction, increase life. Amola steel springs, and deep, sturdily-braced frames promote longer life.**

Q. ***What Dodge Job-Rated cab features contribute to driver comfort and owner savings?***

A. **Steel reinforced with steel cab construction. Rigidly mounted doors—to eliminate squeaks and rattles. Completely rustproofed cabs cut refinishing expense. New, wide comfort-type seats, long-lasting cushion materials and construction.**

Q. ***Why does Job-Rated mean "a truck that fits the job"?***

A. **Each Dodge truck is built throughout with the right-sized units for handling the truck's load—the right-sized engine, frame, transmission, clutch, rear axle, springs and brakes—for long life and economy of operation.**

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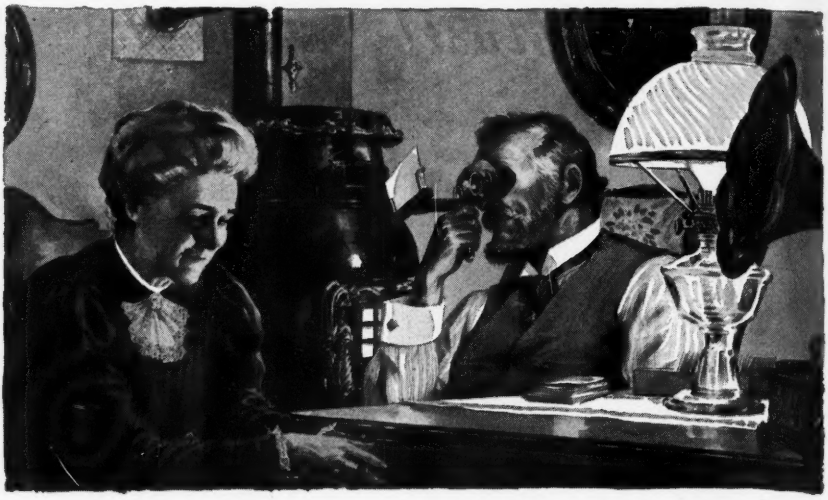

200,000 Products Grandpa Never Had

FOUL SMELLS and commotions—that, to most of us, is a good summary of the mystic fields of Chemistry and Physics. Their lingo — phenol, butyl alcohol, trinitrotoluol, isopropyl spirits—is something to use in cross-word puzzles.

We let the practitioners of the modern Black Arts cheerfully alone, knowing in due time that it will all make sense. The day invariably comes when we get a new radio tube, a new medicine, clothing of glass, hats made of milk, cold light, air-conditioned rooms —all the every day products which to grandfather would have been 200,000 miracles.*

The only tragedy is that we take so much for granted. We are all quite sure that our grandchildren will see 200,000 *more* miracles.

But that's not necessarily true. These miracles of the past and those of the future come from a happy combination of "foul smells and commotions" with a peculiarly American miracle—the American Free Enterprise System.

The miracles of America don't come from the marble halls of the District of Columbia. They happen in the brains and spirits of free men working together.

When you hear men say we need more laws, more restrictions, more dictocracy, you are listening to men who have lost faith in America. They will stop the miracles to come, as their way of thinking would have stopped the 200,000 grandpa never saw.

So listen instead to those who want America to go ahead. Business is *for* more things for more people. So What Helps Business Helps Us All.

**Write for "The Case for Industrial Chemistry" enclosing 10 cents to cover costs.*

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PROFESSIONAL DIRECTORY (*continued*)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

A

American Appraisal Company, The 56

B

Babcock & Wilcox Co., The 28-29
Barber Gas Burner Company, The 3
Barker & Wheeler, Engineers 57
Black & Veatch, Consulting Engineers 57
Burroughs Adding Machine Co. 13

C

Carpenter Manufacturing Company 37
Carter, Earl L., Consulting Engineer 57
Cheney, E. J. and Co., Engineers 57
Chevrolet Motor Division of General Motors Sales Corp. 27
Cities Service Petroleum Products 54
Cleveland Trencher Company, The 51
*Combustion Engineering Company, Inc. .....
Connelly Iron Sponge & Governor Co. 19
Crescent Insulated Wire & Cable Co., Inc. 24

D

Davey Tree Expert Company 19
Day & Zimmermann, Inc., Engineers 56
Dicke Tool Company, Inc. 38
Dictograph Sales Corporation 49
Dodge Division of Chrysler Corp. 47

E

Egry Register Company, The 30
Electric Storage Battery Company, The 55
Electrical Testing Laboratories 17
Elliott Company 34
Elliott Addressing Machine Co., The 5

F

Foley, Robert E., Erecting Engineer 57
Ford, Bacon & Davis, Inc., Engineers 56
*Ford Motor Company .....
Forest City Foundries Company, The 35

G

General Electric Company 23
Grinnell Company, Inc. 45

H

Haberly, Francis S., Engineer 57
Hoosier Engineering Company 31

I

International Harvester Company, Inc. 20

J

Jackson & Moreland, Engineers 57
Jensen, Bowen & Farrell, Engineers 57
Johns-Manville Corporation 39

K

Kerite Insulated Wire & Cable Co., Inc., The 18
Kinnear Manufacturing Company, The 43
Koehler Manufacturing Co. 25

M

Manning, J. H. & Company, Engineers 56
Martens & Stormoen 36
Merco Nordstrom Valve Company 53

N

Nation's Business 52
Neptune Meter Company 21
Newport News Shipbuilding & Dry Dock Company 32

P

Pennsylvania Transformer Company 41
Pittsburgh Equitable Meter Company 53
Pittsburgh Plate Glass Company 33

R

Railway & Industrial Engineering Company 15
Recording & Statistical Corp. ....Inside Back Cover
Remington Rand, Inc. 9
Ridge Tool Company, The 26
Riley Stoker Corporation 7
Robertshaw Thermostat Company 1

S

Sanderson & Porter, Engineers 56
Sangamo Electric Company 25
Sargent & Lundy, Engineers 56
Silex Company, The ....Inside Front Cover
Sloan & Cook, Consulting Engineers 57
Sprague Meter Company, The 48
Stone & Webster Engineering Corporation 57

V

Vulcan Soot Blower Corp. 1

W

Westinghouse Electric & Manufacturing Co. Outside Back Cover
Wopat, J. W., Consulting Engineer 57

Professional Directory 56

*Fortnightly advertisers not in this issue.

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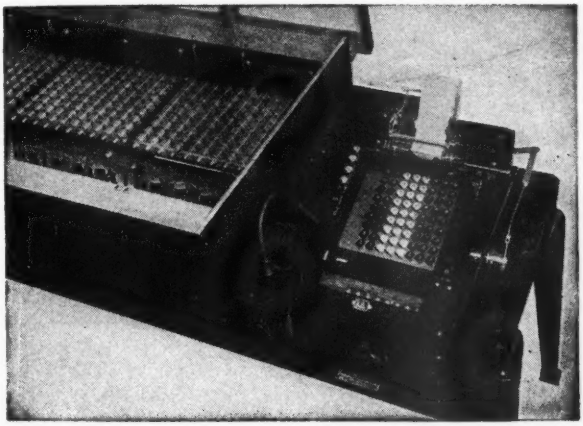

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